

UNITED STATES OF AMERICA, )  
 )  
 V. ) 5:08-CR-262-1-D  
 )  
 FERNANDO MIGUEL NUNEZ, )  
 )  
 DEFENDANT. )  
 )

1 TUESDAY, MAY 19, 2009

2 **THE COURT:** WE'LL NEXT TAKE UP THE SENTENCING OF  
3 MR. NUNEZ. GOOD MORNING, MR. ASHTON. ARE YOU READY?

4 **MR. ASHTON:** WE ARE, YOUR HONOR.

5 **THE COURT:** IS THE GOVERNMENT READY?

6 **MR. ONTJES:** YES, YOUR HONOR. WE ARE. GOOD  
7 MORNING.

8 **THE COURT:** I'D LIKE TO HAVE MR. NUNEZ SWORN.  
9 (DEFENDANT SWORN.)

10 **THE COURT:** MR. NUNEZ, DO YOU UNDERSTAND THAT  
11 HAVING BEEN SWORN, YOUR ANSWERS TO MY QUESTIONS ARE  
12 SUBJECT TO THE PENALTY OF PERJURY?

13 **MR. NUNEZ:** YES, YOUR HONOR.

14 **THE COURT:** DO YOU KNOW WHY YOU ARE HERE TODAY?

15 **MR. NUNEZ:** YES, YOUR EXCELLENCY.

16 **THE COURT:** DO YOU KNOW WHAT WE'RE DOING TODAY?

17 **MR. NUNEZ:** YES, YOUR HONOR.

18 **THE COURT:** HAVE YOU TAKEN ANY KIND OF MEDICINE  
19 OR ANY OTHER SUBSTANCE IN THE LAST 48-HOURS THAT WOULD  
20 AFFECT YOUR ABILITY TO HEAR AND UNDERSTAND THESE  
21 PROCEEDINGS?

22 **MR. NUNEZ:** NO, YOUR HONOR.

23 **THE COURT:** MR. ASHTON, DO YOU HAVE ANY REASON  
24 TO DOUBT MR. NUNEZ'S COMPETENCE TO GO FORWARD HERE TODAY?

25 **MR. ASHTON:** NO, YOUR HONOR.

1           **THE COURT:** MR. ONTJES, DO YOU HAVE ANY REASON  
2 TO DOUBT MR. NUNEZ'S COMPETENCE TO GO FORWARD HERE TODAY?

3           **MR. ONTJES:** NO, YOUR HONOR.

4           **THE COURT:** BASED UPON THE COURT'S OBSERVATIONS  
5 OF MR. NUNEZ, HIS ANSWERS TO MY QUESTIONS, AND THE ANSWERS  
6 FROM COUNSEL, THE COURT FINDS MR. NUNEZ IS COMPETENT TO GO  
7 FORWARD HERE TODAY.

8           MR. NUNEZ IS HERE TODAY HAVING ENTERED A PLEA OF  
9 GUILTY TO POSSESSION WITH INTENT TO DISTRIBUTE IN EXCESS  
10 OF A HUNDRED KILOGRAMS OF MARIJUANA, IN VIOLATION OF 21  
11 U.S. CODE, SECTION 841(A)(1). HE ENTERED THAT PLEA IN  
12 OCTOBER OF 2008, PURSUANT TO PLEA AGREEMENT.

13           MR. NUNEZ, IN LIGHT OF SOME CASES FROM THE SUPREME  
14 COURT OF THE UNITED STATES, INCLUDING THE *BOOKER* CASE, THE  
15 *RITA* CASE, THE *GALL* CASE, THE *KIMBROUGH* CASE, AND THE  
16 *NELSON* AND *SPEARS* CASES, THE SENTENCING GUIDELINES ARE NO  
17 LONGER MANDATORY, THEY ARE ADVISORY. NEVERTHELESS, IN  
18 ACCORDANCE WITH THOSE CASES, A SENTENCING COURT STILL MUST  
19 TAKE INTO ACCOUNT THE NOW-ADVISORY GUIDELINES.

20           THE COURT DOES THIS BY INITIALLY CALCULATING AN  
21 ADVISORY GUIDELINE RANGE AFTER MAKING FINDINGS OF FACT.  
22 THE COURT THEN CONSIDERS ANY MOTION THAT EITHER SIDE MIGHT  
23 MAKE THAT MIGHT MOVE THAT RANGE EITHER UP OR DOWN. THE  
24 COURT THEN WILL CONSIDER ALL ARGUMENTS THAT YOUR LAWYER,  
25 MR. ASHTON, WILL MAKE ON YOUR BEHALF, ANY STATEMENT THAT

1 YOU WOULD LIKE TO MAKE, AND ALL ARGUMENTS OF MR. ONTJES ON  
2 BEHALF OF THE GOVERNMENT. AFTER HEARING FROM ALL OF THOSE  
3 FOLKS, THE COURT WILL ANNOUNCE YOUR SENTENCE RIGHT HERE IN  
4 COURT TODAY. THAT WILL BE THE PROCESS THAT WE'LL FOLLOW,  
5 AND THAT'S THE PROCESS DESCRIBED IN THE CASES I MENTIONED,  
6 AS WELL AS IN RECENT CASES FROM THE 4TH CIRCUIT, INCLUDING  
7 THE *EVANS* CASE AND *PAULEY* CASE.

8 MR. ASHTON, DID YOU GET A COPY OF THE PRESENTENCE  
9 REPORT?

10 **MR. ASHTON:** YES, YOUR HONOR.

11 **THE COURT:** MR. NUNEZ, DID YOU GET A COPY OF  
12 THAT REPORT, SIR?

13 **MR. NUNEZ:** YES, YOUR EXCELLENCY.

14 **THE COURT:** DID YOU SPEAK WITH YOUR LAWYER ABOUT  
15 IT?

16 **MR. NUNEZ:** YES, YOUR EXCELLENCY.

17 **THE COURT:** AT THIS TIME THE COURT DIRECTS THAT  
18 THE PRESENTENCE REPORT BE PLACED IN THE RECORD UNDER SEAL.  
19 IN ACCORDANCE WITH THE FEDERAL RULES OF CRIMINAL  
20 PROCEDURE, THE COURT ACCEPTS AS ACCURATE THE PRESENTENCE  
21 REPORT, EXCEPT AS TO MATTERS IN DISPUTE, AS NOTED IN THE  
22 ADDENDUM. THE COURT HAS REVIEWED THE ADDENDUM AND IT DOES  
23 CONTAIN CERTAIN OBJECTIONS.

24 MR. NUNEZ, YOU MAY HAVE A SEAT. I'M GOING TO TAKE  
25 THESE OBJECTIONS UP WITH MR. ASHTON AT THIS TIME.

1 DO YOU WISH TO BE HEARD, MR. ASHTON, ON THESE  
2 OBJECTIONS?

3 MR. ASHTON: SOME BUT NOT ALL, YOUR HONOR.

4 THE COURT: LET'S GO THROUGH THEM IN ORDER AND  
5 YOU TELL ME IF YOU EITHER WITHDRAW OR WANT TO BE HEARD ON  
6 IT.

7 MR. ASHTON: ON THE FIRST, THE AMOUNT OF DRUGS,  
8 WE WOULD WITHDRAW THAT. I'M NOT PURSUING THAT. HE'S  
9 ACTUALLY HAD SEVERAL DEBRIEFINGS SINCE THAT TIME.

10 THE COURT: SO THAT OBJECTION IS WITHDRAWN. IS  
11 THAT CORRECT, MR. NUNEZ?

12 MR. NUNEZ: YES, YOUR HONOR.

13 THE COURT: THE NEXT OBJECTION IS TO PARAGRAPH  
14 11.

15 MR. ASHTON: YEAH. WE WOULD WITHDRAW THAT AS  
16 WELL. THAT HAS TO DO WITH GETTING THREE POINTS INSTEAD OF  
17 TWO FOR THAT ONE CONVICTION.

18 THE COURT: RIGHT.

19 MR. ASHTON: IT'S REAL CLOSE, BUT I RATHER JUST  
20 ADDRESS THAT MAYBE AS A DEPARTURE ISSUE.

21 THE COURT: OKAY. AND YOU AGREE WITH THAT  
22 WITHDRAWAL, MR. NUNEZ?

23 MR. NUNEZ: YES, SIR, YOUR HONOR.

24 THE COURT: OKAY. THE NEXT OBJECTION IS THE  
25 OBSTRUCTION OBJECTION AND THE ACCEPTANCE THAT KIND OF GO,

1 IN MANY WAYS, HAND-IN-HAND. DO YOU WANT TO BE HEARD ON  
2 THOSE?

3 **MR. ASHTON:** YES, YOUR HONOR. THOSE ARE THE TWO  
4 THAT WE WOULD BE PROCEEDING WITH.

5 **THE COURT:** OKAY. ALL RIGHT. I HAVE READ THE  
6 REPORT AND I'VE READ THE OBJECTIONS AND THE RESPONSES AND  
7 I'M FAMILIAR WITH THE LAW IN THIS AREA, BUT I'LL HEAR FROM  
8 YOU, MR. ASHTON, IF YOU WANT TO ADD ANYTHING BEYOND WHAT'S  
9 IN THE OBJECTIONS AND WHAT'S IN THE REPORT.

10 **MR. ASHTON:** YOUR HONOR, THE OBSTRUCTION OF  
11 JUSTICE IS AS A RESULT OF SOMEONE IN THE WAKE COUNTY JAIL  
12 NAMED LEWIS ALLEN CONTENDING THAT MR. NUNEZ CONTACTED HIM  
13 ABOUT THREATENING SOME OF THE CO-DEFENDANTS.

14 **THE COURT:** NOT JUST THREATENING THEM BUT  
15 KILLING THEM, RIGHT?

16 **MR. ASHTON:** WELL, THAT WOULD BE --

17 **THE COURT:** I GUESS IT WOULD BE SUBSUMED. IT  
18 WOULD BE A SUBSET, BUT THE THREAT WAS TO MURDER THEM,  
19 RIGHT?

20 **MR. ASHTON:** CORRECT.

21 **THE COURT:** DOESN'T THE REPORT INDICATE THAT THE  
22 DEFENDANT ADMITTED THAT WHEN AGENTS INTERVIEWED HIM?

23 **MR. ASHTON:** HE ADMITTED DISCUSSING THIS, BUT I  
24 DON'T KNOW THAT THIS WAS ACTUALLY MORE THAN JAILHOUSE  
25 BRAVADOS. THE THREE PEOPLE WERE NOT WITNESSES, THEY WERE

1 CO-DEFENDANTS. THEY ALL PLED GUILTY. HE WASN'T GOING TO  
2 TRIAL, THEY WEREN'T COMING IN TO TESTIFY. SO I DON'T KNOW  
3 THAT THERE'S -- IT WAS MORE OF A HOLLOW THREAT, IF IT WAS  
4 A THREAT AT ALL. IT WAS MADE TO A THIRD PARTY, AND I  
5 DON'T BELIEVE IT EVER GOT TO THE THREE INDIVIDUALS. WE  
6 THINK THAT'S A FACTOR THAT NEEDS TO BE CONSIDERED AS WELL.

7 IT'S MY UNDERSTANDING THAT MR. ALLEN BASICALLY TOOK  
8 THIS INFORMATION TO HIS LAWYER SO THAT MAYBE HE COULD GET  
9 SOME CONSIDERATION WHEN HE CAME UP FOR SENTENCING. I MEAN  
10 HE WAS LOOKING AT BANK ROBBERY WITH BRANDISHING A FIREARM,  
11 SO I DON'T SEE HOW MR. ALLEN COULD DO MUCH OF ANYTHING FOR  
12 TEN TO 15 YEARS. I BELIEVE HE ACTUALLY GOT A SENTENCE OF  
13 168-MONTHS.

14 **THE COURT:** I GUESS IT DEPENDS ON WHERE FOLKS  
15 ARE HOUSED, RIGHT?

16 **MR. ASHTON:** WHAT?

17 **THE COURT:** IT DEPENDS ON WHERE YOU ARE HOUSED,  
18 DOESN'T IT? LET'S SAY THE CO-DEFENDANTS ARE HOUSED IN THE  
19 SAME FACILITY. IT DOESN'T REALLY MATTER IF SOMEBODY IS  
20 ABOUT TO GET KILLED IF THEY KNOW THEY ARE ABOUT TO GET  
21 KILLED. I GUESS IT AMOUNTS TO WHETHER THE PERSON BEING  
22 HIRED TO DO THE KILLING MAYBE KNOWS, AND IF HE KNOWS AND  
23 HE'S IN THE SAME BUILDING WITH THE PERSON TO BE KILLED,  
24 THAT WOULD SEEM TO BE KIND OF IMPORTANT, DON'T YOU THINK?

25 **MR. ASHTON:** WELL, I DON'T THINK IN THIS

1 PARTICULAR CASE THERE WAS ANY WAY THAT MR. NUNEZ COULD  
2 CARRY FORTH -- THAT MR. ALLEN COULD CARRY FORTH WHAT HE  
3 WAS SAYING HE WAS ASKED TO DO, OR THAT MR. NUNEZ COULD  
4 HAVE PAID HIM OR DONE ANYTHING IN THAT REGARD AS WELL.

5 **THE COURT:** WHY DO YOU SAY THAT?

6 **MR. ASHTON:** BECAUSE MR. ALLEN IS LOCKED UP.

7 **THE COURT:** ALL RIGHT. BUT WHERE WERE THE  
8 PEOPLE THAT WERE BEING HIRED TO BE MURDERED LOCKED UP, DO  
9 YOU KNOW?

10 **MR. ASHTON:** I ASSUME DIFFERENT JAILS AND THEN  
11 OFF TO PRISON. I THINK THEY HAVE ALL BEEN SENTENCED. I  
12 BELIEVE MR. ROBBINS STAYED IN STATE COURT AND TOOK HIS  
13 TIME AND IS PROBABLY IN THE DOC SOMEWHERE, OR HE MAY BE  
14 OUT BY NOW. I DON'T KNOW.

15 **THE COURT:** OKAY.

16 **MR. ASHTON:** IT WAS DONE ON HIS BEHALF.

17 **THE COURT:** I UNDERSTAND. I'M JUST TRYING TO  
18 FOLLOW THE LOGIC OF THE ARGUMENT, THAT'S ALL.

19 **MR. ASHTON:** I CAME LATE IN THE CASE AFTER HE  
20 HAD THE FIRST SET OF DEBRIEFINGS, AND IT'S VERY  
21 FRUSTRATING THAT THIS WOULD ARISE.

22 **THE COURT:** OKAY. MR. ONTJES, DO YOU WANT TO  
23 SAY ANYTHING IN RESPONSE?

24 **MR. ONTJES:** YES, YOUR HONOR. YOUR HONOR, THE  
25 GOVERNMENT IS PREPARED TO CALL AGENT KYLE YORK, WHO IS THE



1 CASE AGENT IN THIS MATTER. IF I COULD PROFFER BRIEFLY,  
2 AGENT YORK WILL TESTIFY THAT HE CAME INTO POSSESSION A  
3 LETTER, HANDWRITTEN, I WOULD SUBMIT, BY THE DEFENDANT THAT  
4 WAS GIVE TO LEWIS ALLEN, A CELL MATE OVER AT WAKE COUNTY  
5 JAIL. MR. ALLEN, AS THE COURT IS WELL AWARE OF, IS A  
6 DEFENDANT WHO WAS SENTENCED BY YOUR HONOR NOT MORE THAN  
7 TWO WEEKS AGO FOR ARMED BANK ROBBERY AND 924(C) .

8 AGENT YORK RECEIVED THIS LETTER FROM MR. ALLEN'S  
9 ATTORNEY. IN THE LETTER, YOUR HONOR, IF I MAY APPROACH  
10 AND INTRODUCE THIS AS GOVERNMENT'S EXHIBIT NO. 1.

11 **THE COURT:** YES.

12 **MR. ONTJES:** AS THE COURT WILL SEE, THE LETTER  
13 IS VERY DETAILED IN THE INFORMATION PROVIDED REGARDING THE  
14 CO-CONSPIRATORS OF THIS DEFENDANT. BEGINNING WITH  
15 MR. DAVID MICHAEL JONES, WHO I WOULD SUBMIT IS SORT OF THE  
16 LEADER OF THIS OPERATION, AND THE TWO TRUCKING AGENCIES IN  
17 WHICH HE WAS RESPONSIBLE FOR OPERATING WHICH TRANSPORTED  
18 THE COCAINE. THE \$30,000 AT THE TOP OF THE LETTER  
19 INDICATES THE BOUNTY THAT WAS PLACED ON MR. JONES' HEAD BY  
20 THE DEFENDANT.

21 THE NEXT INDIVIDUAL IS MR. JIMMY BROGDEN, JUNIOR.  
22 YOUR HONOR, I WOULD SAY THIS IS NOT SOME MERE TALK,  
23 BRAVADO, AS DEFENSE COUNSEL CHARACTERIZED IT. RATHER,  
24 THIS IS SPECIFIC, DETAILED INFORMATION OF WHERE THEY LIVE,  
25 SOCIAL SECURITY NUMBERS, TELEPHONE NUMBERS, BIRTH DATES,

1 AND PHOTOGRAPH OF THE TARGETS, THE INDIVIDUALS IN WHICH  
2 THIS DEFENDANT WANTED KILLED. NEXT TO MR. BROGDEN'S  
3 PICTURES YOU WILL SEE: REWARD, \$20,000, FOR HIS HEAD.

4 THE NEXT DEFENDANT THIS COURT IS VERY WELL FAMILIAR  
5 WITH BECAUSE MR. MORGAN WAS BEFORE THIS COURT SOME SIX,  
6 EIGHT MONTHS AGO, IF THE COURT RECALLS.

7 **THE COURT:** I REMEMBER.

8 **MR. ONTJES:** HE'S THE CO-DEFENDANT OF MR. NUNEZ,  
9 WHO WAS INVOLVED IN THE TRAFFIC STOP RESULTING IN THE  
10 SEIZURE OF THE 900 POUNDS OF MARIJUANA, WHICH IS WHY THE  
11 DEFENDANT IS HERE BEFORE THIS COURT TODAY.

12 MR. MORGAN, AGAIN THE INFORMATION IS VERY, VERY  
13 DETAILED, SPECIFIC, ACCURATE INFORMATION OF WHERE HE  
14 LIVES, SOCIAL SECURITY, DATE OF BIRTH, PHONE NUMBER,  
15 PHOTOGRAPH, AND AGAIN A DOLLAR AMOUNT, MEXICAN CARTEL  
16 REWARD, \$20,000.

17 SO, JUDGE DEVER, I WOULD SUBMIT -- AGAIN, THE CASE  
18 AGENT IS PREPARED TO TESTIFY THAT HE RECEIVED THIS LETTER,  
19 HE THEN WENT AND INTERVIEWED MR. ALLEN, WHO CORROBORATED  
20 OR -- NOT CORROBORATED, BUT RATHER DESCRIBED HOW HE CAME  
21 INTO POSSESSION OF THIS LETTER. THAT MR. NUNEZ APPROACHED  
22 HIM WHILE BEING HOUSED TOGETHER AT THE WAKE COUNTY JAIL.  
23 THAT MR. NUNEZ NOT ONLY SOLICITED MR. ALLEN TO COMMIT  
24 THESE ACTS BUT ALSO, I WOULD SUBMIT, TRIED TO RECRUIT  
25 MR. ALLEN INTO THE DRUG BUSINESS. THESE CONVERSATION WERE

1 ALL GOING ON WHILE THIS DEFENDANT, MR. NUNEZ, WAS AWAITING  
2 SENTENCING BEFORE YOUR HONOR.

3 AFTER SPEAKING WITH MR. ALLEN, AGENT YORK THEN WENT  
4 AND CONFRONTED THE DEFENDANT MR. NUNEZ, WITH HIS ATTORNEY.  
5 DURING THAT INTERVIEW, YOUR HONOR, THE DEFENDANT ADMITTED,  
6 YES, I DID IN FACT SPEAK TO MR. ALLEN ABOUT KILLING THESE  
7 THREE INDIVIDUALS. I WOULD SUBMIT THE REASON BEING,  
8 SPECIFICALLY MR. JONES PROVIDED HISTORICAL DRUG WEIGHT  
9 THAT WAS INCREASING THIS DEFENDANT'S SENTENCE GUIDELINE.  
10 THAT'S WHY HE WANTED HIM KILLED.

11 NOW THERE ARE OTHER REASONS, YOU KNOW, MONEY OWED FOR  
12 DRUG DEBTS, SO FORTH, BUT I SUBMIT TO YOUR HONOR THAT  
13 THESE INDIVIDUALS, IN THE EYES OF THE DEFENDANT, WERE  
14 GOING TO DRAMATICALLY INCREASE HIS SENTENCING GUIDELINE  
15 RANGE AND IF HE COULD ELIMINATE THEM, THEN THE RANGE WOULD  
16 COME DOWN. THAT WOULD BE THE GOVERNMENT'S THEORY AS TO  
17 MOTIVE WHY THIS DEFENDANT, NOT ON THE FACT THAT HE WAS  
18 GOING TO TRIAL OR THAT THESE INDIVIDUALS WERE READY TO  
19 TESTIFY AGAINST HIM IN ANY TYPE OF PROCEEDING LIKE THAT.  
20 THAT, I SUBMIT, IS THE REASON.

21 AS THE COURT HAS ALREADY INDICATED, I THINK ONCE THE  
22 DEFENDANT ACKNOWLEDGED SOLICITING MR. ALLEN TO COMMIT  
23 THESE ACTS, I WOULD SUBMIT THAT'S ALL THAT'S REQUIRED  
24 UNDER THE OBSTRUCTION ENHANCEMENT HERE. THE LEGAL  
25 POSSIBILITY OR IMPOSSIBILITY, AS DEFENSE COUNSEL WOULD

1 MAKE, I WOULD SUBMIT IS NOT RELEVANT HERE.

2 THE COURT HAS ALREADY, I THINK, POINTED OUT MR. ALLEN  
3 COULD HAVE BEEN PLACED WITH MR. JONES IN A FEDERAL  
4 FACILITY, OR WITH MR. MORGAN. MR. ALLEN COULD HAVE  
5 SOLICITED OTHER INDIVIDUALS IN OTHER PRISONS TO CARRY OUT  
6 THE WORK AT THE REQUEST OF MR. NUNEZ FOR THE PAYMENTS AS  
7 OUTLINED IN THIS LETTER.

8 SO, YOUR HONOR, I THINK BY A PREPONDERANCE OF THE  
9 EVIDENCE THE GOVERNMENT HAS ESTABLISHED, AND AGAIN, I'M  
10 PROFFERING WHAT THIS AGENT WOULD TESTIFY TO THE COURT.

11 IN ADDITION, I WOULD MAKE THE COURT AWARE THAT  
12 MR. ALLEN IS ALSO HERE TODAY, IF THE COURT WOULD LIKE TO  
13 HEAR FROM HIM AS WELL OF THE THREAT AND HOW IT CAME ABOUT.

14 **THE COURT:** MR. ASHTON, DO YOU WANT TO HEAR FROM  
15 THESE WITNESSES; DO YOU WANT TO CROSS-EXAMINE THEM?

16 **MR. ASHTON:** I'M PREPARED TO CROSS-EXAMINE  
17 MR. ALLEN.

18 **THE COURT:** I'LL LET YOU CALL YOUR WITNESSES,  
19 MR. ONTJES.

20 **MR. ONTJES:** I WOULD FIRST CALL AGENT YORK.  
21 **KYLE YORK**, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS  
22 DURING **DIRECT EXAMINATION**:

23 **THE COURT:** THE COURT HAS RECEIVED GOVERNMENT'S  
24 EXHIBIT NO. 1.

25 AGENT, MR. ONTJES IS GOING TO HAVE SOME QUESTIONS FOR

1 YOU, THEN MR. ASHTON WILL HAVE QUESTIONS FOR YOU. IF ONE  
2 OF THE LAWYERS OBJECTS TO A QUESTION, JUST DON'T ANSWER  
3 UNTIL I RULED. WHEN THAT, MR. ONTJES, YOU MAY EXAMINE THE  
4 WITNESS.

5 **BY MR. ONTJES:**

6 **Q.** GOOD MORNING, AGENT YORK.

7 **A.** GOOD MORNING.

8 **Q.** HOW ARE YOU EMPLOYED?

9 **A.** I'M A TASK FORCE AGENT WITH THE UNITED STATES DRUG  
10 ENFORCEMENT ADMINISTRATION, EMPLOYED BY THE CITY OF  
11 DURHAM, NORTH CAROLINA, AND HAVE BEEN IN THAT CAPACITY  
12 SINCE ABOUT 2002.

13 **Q.** ALL RIGHT. AND AS A DEA TASK FORCE OFFICER, ARE YOU  
14 FAMILIAR WITH THE INVESTIGATION AND OPERATIONS OF THE  
15 DEFENDANT, MR. NUNEZ?

16 **A.** I AM.

17 **Q.** AND IN ADDITION, AGENT YORK, I BELIEVE YOU WERE ALSO  
18 THE CASE AGENT INVOLVED IN THE CASE OF MR. DAVID MICHAEL  
19 JONES?

20 **A.** THAT'S CORRECT.

21 **Q.** AND HIS OPERATIONS?

22 **A.** YES, SIR.

23 **Q.** FIRST, HOW LONG HAVE YOU BEEN INVESTIGATING OR  
24 WORKING ON THE JONES ORGANIZATION, I'LL CALL IT?

25 **A.** SINCE ABOUT 2002 IS THE FIRST CASE I DEALT WITH AS A

1 TASK FORCE AGENT WITH THE UNITED STATES DRUG ENFORCEMENT  
2 ADMINISTRATION HERE IN RALEIGH.

3 **Q.** CAN YOU BRIEFLY DESCRIBE FOR THE COURT THE JONES  
4 ORGANIZATION AND HOW THIS DEFENDANT FIT INTO THAT  
5 ORGANIZATION BASED ON YOUR INVESTIGATION OVER WHAT FIVE,  
6 SEVEN YEARS?

7 **A.** YES, SIR. MR. JONES WAS THE OWNER/OPERATOR OF A  
8 TRACTOR TRAILER COMPANY HERE IN NORTH CAROLINA,  
9 SPECIFICALLY IN THE CREEDMOOR/OXFORD AREA. MR. JONES WAS  
10 A TRANSPORTATION ARM FOR A MEXICAN CARTEL AND INDIVIDUALS  
11 THAT ARE ON THE U. S. SIDE OF THE BORDER WHERE, IN PART,  
12 HE WOULD TRANSPORT IN EXCESS OF HUNDREDS OF THOUSANDS OF  
13 POUNDS OF MARIJUANA FROM MEXICO INTO LAREDO, TEXAS, THEN  
14 TO POINTS ELSEWHERE WITHIN THE UNITED STATES.

15 IN ADDITION TO THE MARIJUANA, HE ALSO TRANSPORTED  
16 LARGE AMOUNTS OF COCAINE, IN EXCESS OF THOUSANDS OF KILOS  
17 OF COCAINE. THIS OCCURRED FROM 1996 THROUGH HIS ARREST.

18 MR. NUNEZ FELL INTO THIS ORGANIZATION AS A PERSON WHO  
19 HAD CONTACT WITH ANOTHER -- WELL, A POTENTIAL CO-DEFENDANT  
20 WHO RESIDES IN CALIFORNIA. MR. NUNEZ, ACCORDING TO  
21 MR. JONES, FACILITATED ORCHESTRATING THE LOADS FROM LAREDO  
22 INTO NORTH CAROLINA AND THEN FROM NORTH CAROLINA TO POINTS  
23 ELSEWHERE.

24 **Q.** AGENT YORK, MR. JONES HAS BEEN SENTENCED; IS THAT  
25 RIGHT?

1     **A.**     YES, SIR.

2     **Q.**     I BELIEVE HE'S SENTENCED TO A LIFE SENTENCE BY JUDGE  
3     FOX?

4     **A.**     THAT'S CORRECT.

5     **Q.**     WHEN DID YOU BECOME AWARE OF MR. NUNEZ AND HIS ROLE  
6     IN THIS INVESTIGATION?

7     **A.**     DURING THE POINT AT WHICH HIS OTHER CO-DEFENDANTS,  
8     PHILLIP MORGAN, JIMMY BROGDEN, AND MR. NUNEZ WERE FIRST  
9     ARRESTED IN CREEDMOOR, NORTH CAROLINA, FOR APPROXIMATELY  
10    900 POUNDS OF MARIJUANA, I DON'T REMEMBER THE EXACT DATE,  
11    IS THE FIRST TIME THAT I BECAME FAMILIAR WITH MR. NUNEZ.

12    **Q.**     SO SUBSEQUENT INVESTIGATION YOU WERE ABLE TO  
13    DETERMINE THAT MR. NUNEZ HAD THIS RELATIONSHIP BETWEEN THE  
14    DEFENDANT AND MR. JONES AND HIS ORGANIZATION?

15    **A.**     CORRECT. AT THAT ARREST IN CREEDMOOR, NORTH  
16    CAROLINA, WITH MR. MORGAN, MR. BROGDEN, AND MR. NUNEZ,  
17    MR. MORGAN AND BROGDEN DID PROVIDE A FULL STATEMENT WHICH  
18    IMPLICATED MR. NUNEZ IN HIS PARTICIPATION WITHIN THE  
19    ORGANIZATION.

20    **Q.**     MR. NUNEZ DID NOT PROVIDE A STATEMENT INITIALLY?

21    **A.**     THAT'S CORRECT.

22    **Q.**     IF I COULD FAST-FORWARD WITH YOU, AGENT YORK. THE  
23    DEFENDANT NOW ENTERED HIS PLEA TO POSSESSION TO DISTRIBUTE  
24    A HUNDRED KILOS OF MARIJUANA. YOU THEN WERE CONTACTED  
25    ABOUT A LETTER, I BELIEVE, WHICH HAD BEEN PREVIOUSLY

1 INTRODUCED AS GOVERNMENT'S EXHIBIT NO. 1.

2 **MR. ONTJES:** YOUR HONOR, IF I MAY BORROW THAT  
3 FROM YOU?

4 **THE COURT:** YES.

5 **BY MR. ONTJES:**

6 **Q.** AGENT YORK, I'M GOING TO SHOW YOU WHAT'S BEEN  
7 PREVIOUSLY INTRODUCED AS GOVERNMENT'S EXHIBIT 1. CAN YOU  
8 PLEASE IDENTIFY THAT FOR THE COURT?

9 **A.** THIS IS THE LETTER THAT I RECEIVED VIA TELEPHONE CALL  
10 FROM UNITED STATES ATTORNEY'S OFFICE AND LEWIS ALLEN'S  
11 ATTORNEY, SLADE TRABUCCO. IT'S ACTUALLY A PHOTOCOPY OF  
12 THE LETTER.

13 **Q.** ONCE YOU RECEIVED THIS LETTER, AGENT YORK, DID YOU  
14 HAVE A CHANCE TO REVIEW IT AND LOOK AT IT?

15 **A.** I DID. I WAS VERY FAMILIAR WITH EACH OF THE  
16 INDIVIDUALS LISTED ON THE LETTER.

17 **Q.** WHO ARE THESE INDIVIDUALS?

18 **A.** THEY ARE CO-DEFENDANTS, DAVID MICHAEL JONES WHICH,  
19 FOR LACK OF A BETTER TERM, IS THE RING LEADER OF THE  
20 ORGANIZATION HERE IN NORTH CAROLINA. JIMMY WAYNE BROGDEN,  
21 JUNIOR, WHICH IS ANOTHER CO-DEFENDANT OF MR. NUNEZ.  
22 PHILLIP MORGAN, WHO'S A CO-DEFENDANT, ALSO A PART OF THE  
23 JONES ORGANIZATION.

24 **Q.** AND AS PREVIOUSLY DESCRIBED, I THINK THE COURT HAS  
25 HAD A CHANCE TO SEE THE INFORMATION PROVIDED IN THIS



1 LETTER, AS FAR AS THE ADDRESS, THE PHONE NUMBERS, THE  
2 SOCIAL SECURITY, DATE OF BIRTH. TO THE BEST OF YOUR  
3 KNOWLEDGE, IS THAT ACCURATE INFORMATION?

4 **A.** YES, SIR, IT IS.

5 **Q.** AGENT, DO YOU HAVE ANY, BASED ON YOUR TRAINING AND  
6 EXPERIENCE, ANY IDEA HOW THIS INFORMATION WAS OBTAINED?

7 **A.** I'M FAIRLY CERTAIN THAT THE INFORMATION SPECIFIED, AS  
8 FAR AS THE PHONE NUMBER, THE ADDRESS, SOCIAL SECURITY  
9 NUMBER, DATE OF BIRTH, AND SPECIFICALLY THE TWO PHOTOS  
10 CONTAINED WITHIN THE LETTER SPECIFICALLY CAME FROM THE  
11 STATE ARREST WARRANTS. THOSE TWO PHOTOS THAT ARE TAPED OR  
12 PASTED TO THE ORIGINAL ARE EXACTLY WHERE THE INFORMATION  
13 WOULD HAVE COME FROM. THERE'S TWO SMALL BLACK AND WHITE  
14 PHOTOS ON THE TOP OF THE STATE ARREST WARRANT, RIGHT HAND  
15 CORNER.

16 **Q.** WOULD THE DEFENDANT HAVE BEEN PROVIDED THESE STATE  
17 ARREST WARRANTS UPON HIS ARREST IN THE NORMAL DISCOVERY  
18 PROCESS OF THE STATE?

19 **A.** THAT'S CORRECT.

20 **Q.** ONCE YOU RECEIVED THIS LETTER, AGENT YORK, WHAT DID  
21 YOU DO WITH IT?

22 **A.** I AGAIN -- FIRST THING WAS I VERIFIED WHO THESE  
23 PEOPLE WERE. SECOND OF ALL, I HAD A DISCUSSION ABOUT THE  
24 LETTER. I CONTACTED MR. TRABUCCO TO SET UP AN INTERVIEW  
25 WITH HIS CLIENT, MR. ALLEN.

1 Q. DID YOU IN FACT INTERVIEW MR. ALLEN?

2 A. I DID.

3 Q. I BELIEVE YOU DISCUSSED HOW HE RECEIVED THIS LETTER?

4 A. I DID. WE HAD A LENGTHY DISCUSSION. MR. ALLEN, WHO  
5 WAS HOUSED WITH MR. NUNEZ IN THE WAKE COUNTY JAIL IN TWO  
6 DIFFERENT PODS, THEY STRUCK A RELATIONSHIP BASED ON  
7 MR. ALLEN'S MIXED MARSHAL ARTS, FIGHTING, AND THE FACT  
8 THAT MR. ALLEN SPEAKS SPANISH. HE FELT THAT THAT HELPED  
9 WITH THEIR RELATIONSHIP AND TO KIND OF FOSTER THE  
10 RELATIONSHIP.

11 MR. ALLEN -- INITIALLY THEY DISCUSSED WHY THEY WERE  
12 IN JAIL TOGETHER. MR. NUNEZ SAID THAT HE WAS IN JAIL FOR  
13 HIS ARREST IN CREEDMOOR AND MR. ALLEN TOLD MR. NUNEZ THAT  
14 HE WAS IN JAIL FOR A FRAUD CASE.

15 Q. DID MR. ALLEN INDICATE WHEN HE WOULD BE GETTING OUT  
16 OF JAIL?

17 A. HE DID SAY -- MAKE AN EFFORT TO SAY THAT HE WAS  
18 GETTING OUT SOON.

19 Q. OKAY. SO HE TRIED TO MAKE A STORY THEN?

20 A. YES.

21 Q. AND THEN DID HE TELL YOU HOW HE CAME ABOUT POSSESSING  
22 THIS LETTER?

23 A. HE DID. HE SAID THAT DURING THEIR RELATIONSHIP AND  
24 THE CONFIDENCE GAME BETWEEN EACH OTHER DISCUSSING THEIR  
25 ARREST, HE SAID THAT -- MR. ALLEN STATED THAT MR. NUNEZ

1 BASICALLY SOLICITED HIM INTO THE BUSINESS OF THE DRUG  
2 TRADE THAT MR. NUNEZ WAS INVOLVED WITH. AND ALSO MR.  
3 NUNEZ HAD SOLICITED MR. ALLEN TO KILL MR. JONES,  
4 MR. BROGDEN, AND PHILLIP MORGAN BASED ON THIS LETTER ALSO.

5 **Q.** IN FACT, I THINK IT LAID OUT HOW MUCH HE WOULD PAY  
6 FOR EACH INDIVIDUAL KILLING?

7 **A.** ON THE LETTER, YES. SPECIFICALLY 30,000 FOR  
8 MR. JONES AND 20,000 FOR EACH OF MR. BROGDEN AND  
9 MR. MORGAN.

10 **Q.** NOW, MR. ALLEN, OF COURSE, TURNED THIS INFORMATION  
11 OVER TO HIS ATTORNEY, WHICH YOU OBVIOUSLY RECEIVED?

12 **A.** HE DID.

13 **Q.** AFTER SPEAKING TO MR. ALLEN, WHAT DID YOU DO NEXT  
14 WITH THIS LETTER, AGENT YORK?

15 **A.** I THEN CONTACTED MR. NUNEZ'S ATTORNEY AND SET UP A  
16 DEBRIEFING WITH MR. NUNEZ.

17 **Q.** OKAY. AND DURING THAT DEBRIEFING, AGENT YORK, DID  
18 YOU IN FACT CONFRONT THE DEFENDANT WITH THIS LETTER,  
19 GOVERNMENT'S EXHIBIT NO. 1?

20 **A.** I DID CONFRONT MR. NUNEZ. MR. NUNEZ INITIALLY DENIED  
21 ANY KNOWLEDGE OR PARTICIPATION WITHIN THE DRUG  
22 ORGANIZATION. I THEN PRESENTED THE LETTER TO HIM,  
23 EXPLAINED THE SITUATION THAT HE WAS EXPOSING HIMSELF TO,  
24 AND HE DID ADMIT THAT HE DID SOLICIT MR. ALLEN TO KILL  
25 THESE INDIVIDUALS AND THAT HE ALSO HAD A SIGNIFICANT ROLE

1     WITHIN THE DRUG TRAFFICKING ORGANIZATION.

2                 **MR. ONTJES:**   YOUR HONOR, I BELIEVE THAT'S ALL  
3     THE QUESTIONS I HAVE FOR AGENT YORK.

4                 **THE COURT:**   CROSS-EXAMINATION.

5                         **CROSS-EXAMINATION**

6     **BY MR. ASHTON:**

7     **Q.**     AGENT YORK, WE HAD AN INITIAL DEBRIEFING, MY CLIENT  
8     WITH YOU AND ANOTHER AGENT BACK ON JANUARY 30, I BELIEVE;  
9     IS THAT CORRECT?

10    **A.**     I BELIEVE THAT WAS THE CORRECT DATE.

11                **THE COURT:**   OF 2009?

12                **MR. ASHTON:**   2009.

13                **THE COURT:**   OKAY.

14    **BY MR. ASHTON:**

15    **Q.**     AT THE WAKE COUNTY JAIL, CORRECT?

16    **A.**     YES, SIR.

17    **Q.**     AND AT THE CONCLUSION OF THAT DEBRIEFING, IT WAS MY  
18    UNDERSTANDING, AND CORRECT ME IF I'M WRONG, THAT MR. NUNEZ  
19    HAD PROVIDED SOME INFORMATION BUT YOU THOUGHT HE HAD MORE  
20    AND LEFT THE DOOR OPEN FOR A POSSIBLE FURTHER DEBRIEFING;  
21    IS THAT CORRECT?

22    **A.**     THAT IS CORRECT.

23    **Q.**     AND DURING THE NEXT SEVERAL MONTHS PENDING  
24    SENTENCING, YOU AND MR. ONTJES AND I HAD DISCUSSIONS ABOUT  
25    THAT, CORRECT?

1     **A.**    YES, SIR.

2     **Q.**    AND WE SET UP ANOTHER INTERVIEW FOR I GUESS IT WAS IN  
3   MARCH -- MARCH OF THIS YEAR, MARCH 23, SOMETHING LIKE  
4   THAT?

5     **A.**    YES, SIR.

6     **Q.**    DO YOU REMEMBER WHAT THE DATE WAS?

7     **A.**    YES, SIR.  MARCH 23, 2009.

8     **Q.**    OKAY.  AND THAT'S THE DAY YOU HAD BEEN DISCUSSING,  
9   THAT THIS WAS DISCUSSED WITH MR. NUNEZ, CORRECT?

10    **A.**    YES, SIR.

11    **Q.**    THAT WAS IN FRANKLIN COUNTY JAIL?

12    **A.**    THAT'S CORRECT.

13    **Q.**    I WANT TO CLARIFY ONE THING.  WHEN WE SET UP THE  
14   SECOND DEBRIEFING, YOU WERE AWARE OF THIS EXHIBIT, THIS  
15   LETTER, CORRECT?

16    **A.**    YES, SIR.

17    **Q.**    ALL RIGHT.  BUT YOU HAD NOT INFORMED ME OF THAT,  
18   CORRECT?

19    **A.**    CORRECT.

20    **Q.**    SO WHEN WE GOT TO LOUISBURG, I DIDN'T KNOW THIS  
21   EXISTED UNTIL WE HAD BEEN THERE QUITE SOME TIME, CORRECT?

22    **A.**    YES, SIR.

23    **Q.**    AND MR. NUNEZ, WHEN YOU ASKED HIM ABOUT IT, I THINK  
24   YOU SAID HE INITIALLY DENIED IT BUT THEN DISCUSSED IT IN  
25   MORE DETAIL WITH YOU?

1     **A.**     YES, SIR.

2     **Q.**     AND IT'S MY UNDERSTANDING, AS I RECALL, THAT -- DID  
3     HE AND I SAY THAT MR. ALLEN HAD ACTUALLY SORT OF COME TO  
4     HIM AND THEY WERE SORT OF TALKING BACK AND FORTH ABOUT  
5     THIS AND ABOUT CO-DEFENDANTS, AND THAT ACTUALLY MR. ALLEN  
6     ACTUALLY WROTE SOME OF THIS INFORMATION ON HERE?

7     **A.**     I SPECIFICALLY STATED IN MY NOTES AND THE REPORT THAT  
8     YOU ARE REFERRING TO, PARAGRAPH FIVE AND SIX, THAT MR.  
9     NUNEZ STATED THAT HE HAD WROTE SEVERAL LETTERS, OR MORE  
10    THAN ONE LETTER, AND THAT THE LETTER WRITTEN BY ALLEN  
11    INDICATED THAT THERE WAS A \$20,000 BOUNTY FOR THE MURDER  
12    OF PHILLIP MORGAN, JIMMY BROGDEN, AND ADDITIONALLY \$30,000  
13    BOUNTY FOR THE MURDER OF DAVID MICHAEL JONES, IS  
14    SPECIFICALLY WHAT I HAVE IN MY NOTES.

15   **Q.**     BUT DID HE NOT SAY THAT THEY WERE SAYING THAT  
16    TOGETHER AND THEY WERE TALKING, AND MR. ALLEN WAS TAKING  
17    SOME NOTES OR MADE SOME OF THE WRITING HIMSELF?

18   **A.**     MR. ASHTON, I CAN JUST TELL YOU WHAT I HAVE IN MY  
19    REPORT.

20   **Q.**     ALL RIGHT. NOW, AS FAR AS YOU KNOW, ALL MR. ALLEN  
21    DID WITH THAT LETTER WAS TAKE IT TO HIS LAWYER, CORRECT?

22   **A.**     YES, SIR.

23   **Q.**     AND THE INFORMATION ON THERE IS ON ARREST WARRANTS OR  
24    DIFFERENT DOCUMENTS THAT COULD HAVE PERTAINED TO THESE  
25    PEOPLE, CORRECT?

1     **A.**    YES, SIR.

2     **Q.**    AND AFTER MR. NUNEZ AND YOU DISCUSSED THIS LETTER,  
3    THE DEBRIEFING ON THIS CASE CONTINUED, CORRECT?

4     **A.**    I'M NOT SURE I UNDERSTAND YOUR QUESTION.

5     **Q.**    AFTER THIS LETTER WAS DISCUSSED, THE DEBRIEFING  
6    ACTUALLY CONTINUED, CORRECT?

7     **A.**    YES, SIR.

8     **Q.**    AND MR. NUNEZ SPOKE WITH YOU IN MORE DETAIL ABOUT  
9    THIS DRUG CASE AND HIS DEALINGS WITH MR. JONES AND OTHERS,  
10   CORRECT?

11    **A.**    YES, SIR.  VERY DETAILED.

12    **Q.**    ALL RIGHT.  SO HE PROVIDED SUBSTANTIALLY MORE  
13   INFORMATION AT THAT DEBRIEFING THAN HE HAD BEFORE,  
14   CORRECT?

15    **A.**    YES, SIR.

16    **Q.**    AND HE INDICATED THAT IN THE FUTURE HE WOULD STILL BE  
17   WILLING TO COOPERATE IF NECESSARY IF YOU WORKED FURTHER ON  
18   THESE CASES?

19    **A.**    YES, SIR.

20    **Q.**    AND I BELIEVE A LATER TIME HE EVEN PASSED THROUGH TO  
21   ME THAT HE HAD HEARD SOME INFORMATION ABOUT A ROCKY MOUNT  
22   MURDER CASE WHILE HE WAS IN JAIL, CORRECT?

23    **A.**    YES, SIR.

24    **Q.**    AND THAT'S BEEN PASSED ON TO YOUR AGENT IN ROCKY  
25   MOUNT AND ONTO THE ROCKY MOUNT DETECTIVES?

1     **A.**     YES, SIR.  I SPECIFICALLY HAD A DISCUSSION WITH THE  
2     AGENT THAT WORKS IN OUR OFFICE FROM THE ROCKY MOUNT POLICE  
3     DEPARTMENT AFTER YOU AND I HAD OUR DISCUSSION.  RELAYED TO  
4     MR. NUNEZ THE INFORMATION HE PROVIDED CONCERNING THE  
5     MURDERS, AND THE INFORMATION WAS PASSED ON TO THE ROCKY  
6     MOUNT OFFICERS, AND THE LAST INFORMATION I RECEIVED FROM  
7     THEM IS THAT THAT WAS A SOLVED HOMICIDE.  I HAVE NOT  
8     RECEIVED ANY OTHER INFORMATION FROM THE ROCKY MOUNT POLICE  
9     DEPARTMENT AT THIS TIME.

10    **Q.**     IT WAS THAT IT WAS WHAT?

11    **A.**     IT WAS A SOLVED HOMICIDE.  IT HAD ALREADY BEEN  
12    SOLVED.  THAT'S WHAT THEY TOLD ME.

13            **MR. ASHTON:**  THAT'S ALL I HAVE.  THANK YOU.

14            **THE COURT:**  ANY FOLLOW-UP?

15            **MR. ONTJES:**  NO, YOUR HONOR.

16            **THE COURT:**  THANK YOU, AGENT.  YOU MAY STEP  
17    DOWN.  ANY OTHER WITNESSES, MR. ONTJES?

18            **MR. ONTJES:**  JUDGE DEVER, AGAIN, I'M PREPARED TO  
19    CALL LEWIS ALLEN, IF THE COURT WISHES TO HEAR FROM HIM.  I  
20    SUBMIT, BASED ON THE TESTIMONY ALONE OF AGENT YORK, THAT  
21    THE GOVERNMENT HAS PROVEN BY A PREPONDERANCE OF THE  
22    EVIDENCE THAT THE DEFENDANT DID, IN FACT, AS DEFINED UNDER  
23    3C1.1, OBSTRUCT THIS INVESTIGATION OR THIS CASE.

24            **THE COURT:**  WELL, MR. ASHTON INDICATED HE WANTED  
25    TO EXAMINE HIM.  I'LL LET MR. ASHTON CALL HIM IF HE WANTS



1 TO. DO YOU WANT TO CALL HIM?

2 MR. ASHTON: I JUST WANTED TO ASK HIM ABOUT  
3 ANOTHER LETTER THAT MR. ALLEN WROTE HIM AFTERWARDS.

4 THE COURT: WHY DON'T YOU CALL HIM, MR. ONTJES,  
5 AND MR. ASHTON CAN EXAMINE HIM.

6 MR. ONTJES: THE GOVERNMENT WILL CALL LEWIS  
7 ALLEN.

8 LEWIS C. ALLEN, BEING FIRST DULY SWORN, TESTIFIED AS  
9 FOLLOWS DURING DIRECT EXAMINATION:

10 THE COURT: GOOD MORNING, MR. ALLEN. MR. ONTJES  
11 WILL HAVE SOME QUESTIONS FOR YOU, THEN MR. ASHTON OVER AT  
12 THIS TABLE WILL HAVE QUESTIONS FOR YOU. IF ONE OF THE  
13 LAWYERS OBJECTS TO THE OTHER LAWYER'S QUESTION, DON'T SAY  
14 ANYTHING UNTIL I HAVE RULED ON THE OBJECTION.

15 MR. ONTJES, YOU MAY EXAMINE MR. ALLEN.

16 BY MR. ONTJES:

17 Q. GOOD MORNING, MR. ALLEN. HOW ARE YOU?

18 A. FINE, SIR.

19 Q. YOU UNDERSTAND WHY YOU ARE HERE TODAY; IS THAT  
20 CORRECT?

21 A. YES, SIR.

22 Q. YOU ARE SUBPOENAED BY THE GOVERNMENT AS PART OF YOUR  
23 PLEA AGREEMENT TO TESTIFY IN THE MATTER INVOLVING THE  
24 DEFENDANT, MR. NUNEZ?

25 A. YES.

1 Q. NOW MR. ALLEN, JUST SORT OF SOME BACKGROUND  
2 INFORMATION. I BELIEVE YOU PREVIOUSLY PLED GUILTY  
3 PURSUANT TO A PLEA AGREEMENT WITH THE GOVERNMENT TO ARMED  
4 BANK ROBBERY AND POSSESSION OF FIREARM DURING A CRIME OF  
5 VIOLENCE; IS THAT RIGHT?

6 A. YES.

7 Q. IN FACT, I'M HOLDING IN MY HAND THE PLEA AGREEMENT  
8 WHICH YOU SIGNED AND ENTERED BEFORE JUDGE DEVER, I BELIEVE  
9 IT WAS BACK ON OCTOBER 6, 2008; DO YOU REMEMBER THAT?

10 A. YEAH.

11 Q. AND THAT AS PART OF YOUR PLEA AGREEMENT, YOU AGREED  
12 TO COOPERATE WITH THE GOVERNMENT, WHEN CALLED UPON,  
13 WHETHER THAT BE IN TESTIMONY OR IN DEBRIEFS?

14 A. YES.

15 Q. YOU UNDERSTAND THAT'S PART OF YOUR PLEA AGREEMENT?

16 A. YES.

17 Q. AND AS PART OF MY AGREEMENT, AS FAR AS THE UNITED  
18 STATES IS CONCERNED, THAT I WOULD MAKE THE COURT AWARE, IN  
19 THIS CASE YOUR SENTENCING JUDGE, JUDGE DEVER, THE EXTENT  
20 OF YOUR COOPERATION?

21 A. YES.

22 Q. DO YOU UNDERSTAND THAT?

23 A. (NODDING.)

24 Q. BUT HAVE ANY PROMISES BEEN MADE TO YOU AS FAR AS ANY  
25 TYPE OF SENTENCE REDUCTION FOR YOUR COOPERATION TODAY?

1     **A.**     NO.

2     **Q.**     OKAY.  NOW, MR. ALLEN, I BELIEVE YOU WERE SENTENCED  
3     NOT MORE THAN TWO WEEKS AGO, MAY 5 OF THIS YEAR TO  
4     138-MONTHS BY THIS COURT, RIGHT?

5     **A.**     YES.

6     **Q.**     OKAY.  MR. ALLEN, I WANT TO TURN YOUR ATTENTION NOW  
7     TO YOUR KNOWLEDGE AND RELATIONSHIP WITH THE DEFENDANT, MR.  
8     NUNEZ.  FIRST OFF, DO YOU SEE MR. NUNEZ HERE TODAY IN  
9     COURT?

10    **A.**     YES.

11    **Q.**     CAN YOU POINT HIM OUT FOR ME, PLEASE?

12    **A.**     SITTING OVER THERE WITH THE RED JUMPSUIT ON.

13               **MR. ONTJES:**  LET THE RECORD REFLECT THE WITNESS  
14     IDENTIFIED THE DEFENDANT.

15               **THE COURT:**  THE RECORD WILL SO REFLECT.

16    **BY MR. ONTJES:**

17    **Q.**     MR. ALLEN, WHEN DID YOU FIRST MEET THE DEFENDANT?

18    **A.**     WAKE COUNTY JAIL, ROUGHLY IN OCTOBER OF '08.

19    **Q.**     OKAY.  BOTH OF YOU WERE HOUSED THERE TOGETHER?

20    **A.**     YES.

21    **Q.**     HOW DID YOU FIRST STRIKE UP A CONVERSATION; WHAT DID  
22     YOU-ALL TALK ABOUT?

23    **A.**     I BELIEVE HE RECOGNIZED ME FROM A TELEVISION SHOW I  
24     WAS ON CALLED "ULTIMATE FIGHTER."

25    **Q.**     WHAT IS "ULTIMATE FIGHTER?"

1     **A.**     IT'S PROFESSIONAL MIXED MARSHAL ARTS FIGHTING.  IT'S  
2     TELEVISED.

3     **Q.**     THAT YOU WERE A PARTICIPANT IN?

4     **A.**     YES.

5     **Q.**     HE RECOGNIZED YOU FROM THAT SHOW?

6     **A.**     YES.

7     **Q.**     IN FACT, WERE YOU ON THAT SHOW?

8     **A.**     YES.

9     **Q.**     ALL RIGHT.  PLEASE CONTINUE.  WHAT ELSE DID YOU TALK  
10    ABOUT INITIALLY?

11    **A.**     THEN WE STARTED TALKING ABOUT WHY HE WAS IN HERE,  
12    STARTED EXCHANGING INFORMATION ABOUT WHAT WE DID ON THE  
13    STREET.  I GAVE HIM INFORMATION ABOUT MY FIANCEE'S FATHER  
14    OWNS A TRUCKING BUSINESS CALLED JACOBS TRANSPORTATION.

15    **Q.**     WHERE'S THAT BASED AT?

16    **A.**     OUT OF FAYETTEVILLE, NORTH CAROLINA.

17    **Q.**     THIS IS A TRUCKING BUSINESS?

18    **A.**     YEAH.

19    **Q.**     NOW, MR. ALLEN, YOU TWO EXCHANGED WHY YOU WERE IN  
20    THERE.  YOU TOLD THE DEFENDANT ABOUT YOUR CHARGES?

21    **A.**     NO, I DIDN'T.  I TOLD HIM I WOULD BE GETTING OUT  
22    SOON.  I DIDN'T GET INTO DETAIL ABOUT MY CHARGES.

23    **Q.**     SO YOU TOLD HIM YOU WERE GETTING OUT FAIRLY SOON?

24    **A.**     YES.

25    **Q.**     THAT'S NOT TRUE, IS IT, OBVIOUSLY?

1     **A.**     NO.

2     **Q.**     WHY DID YOU TELL HIM THAT?

3     **A.**     TO BE HONEST WITH YOU, I WAS EMBARRASSED TO GIVE MY  
4     TRUE CHARGE. ONE TIME I'M ON THE SHOW DOING WELL, THE  
5     NEXT TIME I'M SITTING HERE FOR BANK ROBBERY. I LIED TO A  
6     LOT OF PEOPLE IN THE JAIL WHY I WAS INCARCERATED. I TOLD  
7     STORIES ABOUT BEING LOCKED UP FOR SELLING STEROIDS. I  
8     TOLD DIFFERENT STORIES THAT KIND OF MADE ME NOT LOOK AS  
9     BAD AS ROBBING A BANK.

10    **Q.**     BECAUSE YOU WERE ON THIS TV SHOW AND YOU HAD A  
11    REPUTATION TO MAINTAIN?

12    **A.**     (NODDING.)

13    **Q.**     DO YOU SPEAK SPANISH?

14    **A.**     YES.

15    **Q.**     ARE YOU FLUENT?

16    **A.**     YES.

17    **Q.**     DID THE DEFENDANT KNOW THAT?

18    **A.**     YES.

19    **Q.**     IN FACT, YOU TWO SPOKE IN SPANISH OCCASIONALLY?

20    **A.**     YES.

21    **Q.**     SO YOU TOLD HIM YOUR FIANCEE'S FATHER HAD A TRUCKING  
22    BUSINESS?

23    **A.**     UH-HUH.

24    **Q.**     YOU SPOKE FLUENT SPANISH?

25    **A.**     UH-HUH.

1 Q. AND YOU WERE PART OF THIS MIXED MARSHAL ARTS; YOU ARE  
2 A TRAINED FIGHTER?

3 A. RIGHT.

4 Q. DID THERE COME A TIME, MR. ALLEN, THAT YOU TWO SPOKE  
5 ABOUT THE DEFENDANT AND HIS INVOLVEMENT IN THE SALE OF  
6 DRUGS?

7 A. YES.

8 Q. CAN YOU TELL JUDGE DEVER ABOUT THAT?

9 A. WELL, THAT'S BASICALLY HOW THE WHOLE CONVERSATION  
10 ABOUT DRUGS OCCURRED, BECAUSE MY FIANCEE'S FATHER OWNS  
11 TRUCKS, AND THAT'S HOW HE TRANSPORTED LARGE AMOUNTS OF  
12 DRUGS FROM ONE SPOT TO ANOTHER.

13 Q. THIS IS WHAT THE DEFENDANT TOLD YOU?

14 A. YES.

15 Q. DID HE DETAIL TO YOU AS FAR AS WHERE THE DRUGS WERE  
16 BEING SHIPPED FROM?

17 A. YEAH. MOST OF THE MARIJUANA WOULD BE SHIPPED FROM  
18 LAREDO, TEXAS, TO DIFFERENT SPOTS. HE GOT ARRESTED IN  
19 CREEDMOOR BUT IT WAS DIFFERENT STATES THAT THEY WOULD BE  
20 DROPPED OFF AT AS WELL.

21 Q. DID HE IDENTIFY TO YOU THE SOURCES OF THE MARIJUANA?

22 A. HIS GO-BETWEEN -- THE SOURCE WAS IN MEXICO, BUT THE  
23 GO-BETWEEN, THE INDIVIDUAL WHO PROVIDED WAREHOUSING FOR  
24 THE DRUGS WAS JOE PEREZ.

25 Q. MR. PEREZ, WHERE WAS HE LIVING AT THE TIME, BASED ON

1 WHAT THE DEFENDANT TOLD YOU?

2 **A.** CHINO HILLS, CALIFORNIA.

3 **Q.** DID HE ALSO TELL YOU ABOUT HIS INVOLVEMENT IN COCAINE  
4 TRAFFICKING?

5 **A.** YEAH. THAT CAME UP BECAUSE ANOTHER GUY THAT OWED HIM  
6 LARGE AMOUNTS OF MONEY, MICHAEL JONES.

7 **Q.** IS THAT DAVID MICHAEL JONES?

8 **A.** DAVID MICHAEL JONES.

9 **Q.** HE OWED MR. NUNEZ MONEY?

10 **A.** INITIALLY THEY HAD DRUG TRANSACTIONS WHERE HE BEAT  
11 HIM OUT OF MONEY, TOOK MONEY FROM HIM BECAUSE OF COCAINE,  
12 AND STILL OWED HIM A LARGE AMOUNT OF MONEY. I BELIEVE HE  
13 WAS WORKING IT OFF WITH TRANSPORTATION. THEN THE OTHER  
14 TWO CO-DEFENDANTS IN THIS CASE, JIMMY BROGDEN AND WAYNE --  
15 I CAN'T REMEMBER THE WHOLE NAME -- BUT THE OTHER TWO  
16 CO-DEFENDANTS ON THIS CASE, THEY ARE THE ONES THAT  
17 SNITCHED ON HIM, AND MICHAEL JONES ALSO, YOU KNOW,  
18 INITIATED THE SNITCHING PROCESS. SO THAT'S WHEN HE BECAME  
19 INDEBTED TOWARDS THEM, WISHING SOMETHING COULD HAPPEN TO  
20 THEM.

21 **Q.** BEFORE WE GET TO THAT PART, LET ME FINISH THIS, IF  
22 YOU COULD. AS FAR AS THE DRUG BUSINESS PART OF YOUR  
23 CONVERSATION WITH THE DEFENDANT, DID AT SOME POINT HE  
24 SOLICIT YOU TO GET INVOLVED IN THE DRUG BUSINESS?

25 **A.** YEAH. HE TOLD ME THERE WAS A LOT OF OPPORTUNITIES IN

1 THE BUSINESS, AS FAR AS PROVIDING INFORMATION AND THEN,  
2 YOU KNOW, WHEN I GET OUT HE'LL HOOK ME UP WITH CONNECTIONS  
3 AND I COULD PROVIDE TRANSPORTATION FOR HIS PEOPLE TO GET  
4 THE TRUCKS ROLLING. AT THIS POINT IN TIME, HE THOUGHT HE  
5 WOULD DO LIKE 18-MONTHS, A LITTLE OVER OR SOMETHING.

6 **Q.** HE BEING THE DEFENDANT?

7 **A.** YEAH. MR. NUNEZ. SO I PROVIDED TRANSPORTATION FOR  
8 THE TRUCKS AND HE KIND OF GOT INTO DETAIL ABOUT, YOU KNOW,  
9 I COULD BE PAID 10,000 A KEY OR I COULD -- FOR ONE LOAD I  
10 COULD BE PAID A HUNDRED THOUSAND DOLLARS.

11 **Q.** SO THESE ARE THE AMOUNTS OF MONEY YOU COULD BE MAKING  
12 IF YOU AGREED TO JOIN THIS DRUG CONSPIRACY?

13 **A.** YEAH. AND THE DRIVERS MAKE \$20,000. SO WHATEVER OUT  
14 OF THE HUNDRED THOUSAND DOLLARS, I WOULD PAY MY DRIVERS TO  
15 TRANSPORT.

16 **Q.** WHO, MR. ALLEN, WERE YOU SUPPOSED TO CONTACT ONCE YOU  
17 GOT OUT TO GET INVOLVED IN THIS ORGANIZATION, DID HE TELL  
18 YOU?

19 **A.** JOE PEREZ.

20 **Q.** JOE PEREZ. THE INDIVIDUAL YOU DESCRIBED AS LIVING IN  
21 CALIFORNIA?

22 **A.** YES.

23 **Q.** OKAY. ANYBODY ELSE THAT THE DEFENDANT INDICATED WAS  
24 INVOLVED IN THIS ORGANIZATION AS FAR AS FAMILY MEMBERS, OR  
25 ANYTHING LIKE THAT?



1     **A.**     HIS BROTHER HENRY, HE'S ACTUALLY THE ONE WHO ABDUCTED  
2     (SIC) HIM INTO THE WHOLE DRUG CARTEL BUSINESS. HE KIND OF  
3     SHOWED HIM THE ROPES. HE'S DOING TIME ACTUALLY IN TEXAS  
4     NOW. ONCE HE GOT OUT, THEN ME AND HIM WOULD CONNECT AND  
5     KEEP IT ROLLING.

6     **Q.**     ALL RIGHT. NOW, LET ME TURN YOUR ATTENTION TO THE  
7     THREAT. I THINK YOU'VE ALREADY INDICATED THAT THE  
8     DISCUSSION ABOUT THE DEFENDANT'S CO-CONSPIRATORS CAME UP;  
9     MR. MICHAEL JONES, DAVID MICHAEL JONES, PHILLIP MORGAN,  
10    JIMMY BROGDEN, THOSE INDIVIDUALS WERE DISCUSSED?

11    **A.**     (NODDING.)

12    **Q.**     TELL JUDGE DEVER HOW IT CAME ABOUT THAT THE DEFENDANT  
13    SOLICITED YOU TO KILL THESE INDIVIDUALS?

14    **A.**     WELL, LIKE I SAID, THEY ARE THE CAUSE OF HIM BEING IN  
15    HERE. THEY SNITCHED ON HIM. SO THAT'S -- OF COURSE  
16    THAT'S WHAT MADE HIM IN DEBT TO CHALLENGE THEM. I WAS TO  
17    GET OUT FIRST. IT WAS LIKE I HAD A LOT OF OPPORTUNITY IN  
18    IT FOR YOU, THERE'S A LOT OF MONEY TO BE MADE FOR THEM TO  
19    BE TAKEN CARE OF. I AT FIRST THOUGHT HE WAS TALKING  
20    BECAUSE HE'S MAD AT THESE GUYS, THEY TOLD ON HIM. HE TOLD  
21    ME, HE SAID, ONE GUY, MICHAEL JONES, HAS ABOUT  
22    \$1.5 MILLION IN HIS WALL AND THE OTHER GUY --

23    **Q.**     WALL? WHAT WALL?

24    **A.**     IN HIS WALL ON THE SIDE OF HIS HOUSE.

25    **Q.**     OKAY.

1     **A.**     AND MICHAEL JACOBS STILL OWED HIM WHATEVER THE AMOUNT  
2     WAS, IT CAME UP IN DOLLAR AMOUNTS TO \$40,000 WORTH OF  
3     MARIJUANA.

4     **Q.**     NOW MR. JACOBS, THAT'S ANOTHER INDIVIDUAL UNRELATED  
5     TO THE CASE IN WHICH THE DEFENDANT WAS ARRESTED?

6     **A.**     YEAH. HE IS SOMEONE TOTALLY SEPARATE. BUT ME  
7     GETTING OUT COLLECTING THIS MONEY AND TAKING CARE OF THEM  
8     WOULD PROVE MY LOYALTY, YOU KNOW, TO THE ORGANIZATION, I  
9     SUPPOSE. SO INFORMATION WAS PROVIDED TO ME NOT TOO LONG  
10    AFTER WE HAD THAT CONVERSATION.

11    **Q.**     THIS CONVERSATION OCCURRED WHERE AGAIN, MR. ALLEN?

12    **A.**     WHAT?

13    **Q.**     WHERE DID THIS CONVERSATION OCCUR?

14    **A.**     IN BLUE 5, WAKE COUNTY JAIL.

15    **Q.**     THAT'S CELL BLOCK 5 BLUE?

16    **A.**     YES.

17    **Q.**     AND YOU WERE HOUSED WITH THE DEFENDANT THERE?

18    **A.**     YES.

19    **Q.**     THIS INFORMATION, I BELIEVE YOU SUBSEQUENTLY TURNED  
20    OVER TO YOUR ATTORNEY, MR. SLADE TRABUCCO; IS THAT  
21    CORRECT?

22    **A.**     YES.

23    **Q.**     WHO PROVIDED YOU -- I'M GOING TO SHOW YOU, IF I MAY  
24    APPROACH YOUR HONOR, WHAT'S PREVIOUSLY INTRODUCED AS  
25    GOVERNMENT'S EXHIBIT NO. 1. I'LL HAVE YOU IDENTIFY THAT

1 FOR ME, PLEASE. DO YOU RECOGNIZE THAT, MR. ALLEN?

2 **A.** YES.

3 **Q.** WHAT IS THAT?

4 **A.** THAT'S THE INFORMATION PROVIDED TO ME BY MR. NUNEZ.  
5 THAT WAS THE INFORMATION THAT I WOULD GO OFF OF TO CARRY  
6 OUT THE ASSASSINATION, OR HIT, WHATEVER.

7 **Q.** THE HIT?

8 **A.** YES.

9 **Q.** WHO WROTE THAT?

10 **A.** I DIDN'T PHYSICALLY SEE MR. NUNEZ WROTE IT, BUT MR.  
11 NUNEZ PROVIDED IT TO ME.

12 **Q.** DID YOU WRITE IT?

13 **A.** NO.

14 **Q.** SO DID THERE COME A POINT -- HE GAVE YOU THIS LETTER?

15 **A.** YES.

16 **Q.** WITH INSTRUCTIONS?

17 **A.** YES.

18 **Q.** AND I THINK THE DOLLAR AMOUNTS ARE BY EACH  
19 INDIVIDUAL?

20 **A.** YES.

21 **Q.** AND WHAT WERE YOU TOLD ABOUT THE DOLLAR AMOUNTS? HOW  
22 WAS THAT GOING TO BE PAID AND FOR WHAT?

23 **A.** THAT WOULD BE PAID THROUGH JOE PEREZ. I WOULD  
24 CONTACT HIM AND TELL HIM ABOUT THE SITUATION, TELL HIM  
25 WHAT I COULD PROVIDE AND I WOULD TAKE CARE OF IT AND HE

1 WOULD BE THE ONE TO TAKE CARE OF THE OTHER.

2 Q. SO MR. PEREZ, WHO IS ON THE OUTSIDE, WOULD PAY YOU  
3 ONCE YOU HAD TAKEN OUT THESE INDIVIDUALS?

4 A. RIGHT.

5 Q. DURING THIS TIME, MR. ALLEN, YOU ARE PLAYING ALONG?

6 A. YES.

7 Q. YOU ARE TELLING HIM YOU ARE IN AGREEMENT?

8 A. YES.

9 Q. OKAY. ANY INTENTION OF DOING ANY OF THIS?

10 A. NO.

11 Q. WITH THIS LETTER IN HAND, WHAT DID YOU DO WITH IT?

12 A. TURNED IT OVER TO SLADE TRABUCCO. WELL, FIRST I MET  
13 WITH ROSEMARY GODWIN AND TIM GAINES, FBI, AND I EXPLAINED  
14 TO HIM THE SITUATION. I DIDN'T SEE MY LAWYER, WHICH IS  
15 ROSEMARY GODWIN, FOR A COUPLE WEEKS AFTER THAT. THEN I  
16 SUPPOSE A CONFLICT OF INTEREST, SHE HAD TO REMOVE HERSELF  
17 OUT OF THE CASE. SO THEN SLADE TRABUCCO CAME DOWN AND I  
18 TOLD HIM.

19 MR. ONTJES: YOUR HONOR, APOLOGIZE. I MAY HAVE  
20 MISSPOKE. MS. ROSEMARY GODWIN WAS INITIALLY HIS ATTORNEY.  
21 DUE TO THE CONFLICT THAT AROSE OUT OF THIS, THE FEDERAL  
22 PUBLIC DEFENDER REPRESENTED ONE OF THESE, THEY HAD TO  
23 WITHDRAW AND SLADE TRABUCCO TOOK OVER.

24 THE COURT: OKAY.

25 BY MR. ONTJES:

1 Q. YOU SUBSEQUENTLY PROVIDED THE LETTER TO MR. TRABUCCO,  
2 WHO IN TURN PROVIDED IT TO AGENT YORK?

3 A. YES.

4 Q. AND YOU WERE SUBSEQUENTLY INTERVIEWED BY AGENT YORK  
5 ABOUT THIS INCIDENT?

6 A. YES.

7 Q. YOU MENTIONED AGENT GAINES AND --

8 A. YES.

9 Q. WAS HE THE CASE AGENT IN YOUR CASE, THE BANK ROBBERY?

10 A. YES.

11 Q. I WANT TO BRING OUT ANOTHER LETTER INTERCEPTED BY LAW  
12 ENFORCEMENT THAT I BELIEVE YOU WROTE. I PROVIDED A COPY  
13 OF THIS LETTER TO DEFENSE COUNSEL.

14 MR. ALLEN, I'M GOING TO SHOW YOU WHAT'S PREVIOUSLY  
15 MARKED AS GOVERNMENT'S EXHIBIT NO. 2, AND ASK YOU TO TAKE  
16 A LOOK AT THAT. DO YOU RECOGNIZE THAT?

17 A. YES.

18 Q. WHAT'S THAT?

19 A. IT'S A LETTER I WROTE TO AN INDIVIDUAL THAT PROVIDED  
20 A GUN THAT I USED IN MY ROBBERIES.

21 Q. I THINK THE INDIVIDUAL'S NAME IS PATTY?

22 A. YES.

23 Q. WHO'S PATTY?

24 A. SHE'S THE ONE WHO PURCHASED THE GUN AND GAVE IT TO  
25 ANOTHER INDIVIDUAL, WHO IN TURN SOLD IT TO ME.

1 Q. THAT OTHER INDIVIDUAL'S NAME, I BELIEVE YOU REFERRED  
2 TO HIM IN THE LETTER AS CHIEF?

3 A. HIS NAME IS HEATH.

4 Q. HEATH? THAT'S HIS REAL NAME?

5 A. YES.

6 MR. ONTJES: YOUR HONOR, AT THIS TIME IF I MAY  
7 INTRODUCE GOVERNMENT'S EXHIBIT NO. 2 AND PUBLISH IT?

8 THE COURT: IT WILL BE RECEIVED.

9 BY MR. ONTJES:

10 Q. THE LETTER INDICATES, MR. ALLEN, THAT -- IT APPEARS  
11 TO INDICATE THAT YOU ARE SOLICITING, IN EXCHANGE FOR YOUR  
12 SILENCE, SOLICITING SUPPORT FROM PATTY AND HEATH, SUPPORT  
13 TO YOUR FIANCEE ON THE OUTSIDE?

14 A. YES.

15 Q. CAN YOU EXPLAIN THAT?

16 A. WELL, I WAS INTERVIEWED BY TIM GAINES ON TWO  
17 DIFFERENT OCCASIONS. THE FIRST TIME I DIDN'T COOPERATE  
18 WITH HIM. THE SECOND TIME I SLIGHTLY COOPERATED WITH HIM.  
19 I TOLD HIM, I SAID THE GUY'S NAME IS HEATH, WHICH I ONLY  
20 KNEW HIS FIRST NAME.

21 Q. SO YOU TOLD AGENT GAINES IN THE SECOND INTERVIEW THAT  
22 HEATH IS THE ONE THAT PROVIDED THE GUN?

23 A. YES. AND ALSO TOLD HIM HE WORKED AT A PLACE CALLED  
24 PUROLATOR. SO NOTHING CAME ABOUT, YOU KNOW, SIX OR SEVEN  
25 MONTHS PASSED, NOTHING CAME ABOUT, NO ONE WAS ARRESTED.

1 SO I FIGURED HE WAS STILL OUT THERE, I'M NOT PURSUING THE  
2 ISSUE OF HIM BEING ARRESTED, SO HE GOT OFF SCOTT FREE.

3 **Q.** IT'S NOT YOUR JOB TO PURSUE HIM, RIGHT?

4 **A.** I PROVIDED THE INFORMATION. THE AGENT PURSUED THE  
5 INFORMATION. I FIGURED, NO ONE HAS BEEN ARRESTED, HE'S  
6 STILL ON THE STREETS. I ASKED MY FIANCEE, "HAS HE EVER  
7 COME AND SAID ANYTHING TO YOU OR ASKED IF YOU NEED  
8 ANYTHING?" SHE SAID, "I NEVER SEEN HIM." SO I'M LIKE ALL  
9 RIGHT. SO THAT'S WHEN I WANT TO WRITE THE LETTER, SAID  
10 WHY DON'T YOU GO OVER SOME TIME AND SHOW SOME  
11 APPRECIATION, YOU ARE STILL OUT THERE AND I'M IN HERE.

12 THEY PUT PRESSURE ON ME TO COOPERATE WITH THEM, YOU KNOW.

13 **Q.** BUT THEY DIDN'T SPECIFICALLY TALK TO YOU ABOUT HEATH,  
14 OTHER THAN WHAT YOU PREVIOUSLY MENTIONED?

15 **A.** NO.

16 **Q.** WAS IT YOUR INTENTION TO EXTORT PATTY AND HEATH TO  
17 PROVIDE SUPPORT FOR YOUR FIANCEE?

18 **A.** HEATH LIVES IN A ONE BEDROOM APARTMENT WHICH HE  
19 SHARES WITH A ROOMMATE. HE WORKS AT PUROLATOR, WHICH IS A  
20 MANUAL LABOR JOB. HE MAKES ABOUT \$10 AN HOUR AND HE SELLS  
21 GUNS ON THE SIDE, SO FINANCIALLY I DON'T THINK HE CAN  
22 PROVIDE MUCH SUPPORT.

23 **Q.** WHAT WAS YOUR INTENTION THAT MR. ALLEN DO?

24 **A.** ANY KIND OF APPRECIATION HE CAN SHOW. COME BY AND  
25 SAY THANK YOU. COME BY AND SAY, "ARE YOU ALL RIGHT, WOULD

1 YOU LIKE ME TO TAKE YOU UP AND SEE HIM?" IT'S HARD FOR  
2 HER TO COME UP AND SEE ME, SHE'S SO FAR AWAY. ANY TYPE OF  
3 APPRECIATION, GRATIFICATION FOR HIM STILL BEING OUT THERE  
4 AND ME BEING IN HERE.

5 Q. I BELIEVE YOU HAVE A SMALL CHILD WITH YOUR FIANCEE?

6 A. YES.

7 Q. HOW OLD?

8 A. FIVE MONTHS.

9 Q. OKAY. NOW, MR. ALLEN, AFTER YOU HAD PROVIDED THIS  
10 LETTER, BEING GOVERNMENT'S EXHIBIT NO. 1, DID IT COME TO  
11 YOUR UNDERSTANDING THAT THE LETTER WAS TURNED OVER TO MR.  
12 NUNEZ AND HIS COUNSEL? DID IT COME TO YOUR UNDERSTANDING;  
13 DID YOU COME TO LEARN THAT?

14 A. (NODDING.)

15 Q. AS A RESULT OF THAT, MR. ALLEN, DID SOME INDIVIDUALS  
16 APPROACH YOU IN THE WAKE COUNTY JAIL?

17 A. YEAH. THREE HISPANIC MALES KNOWN AS THE LATIN KING  
18 GANG.

19 Q. I WANT JUDGE DEVER TO HEAR ALL ABOUT THIS. WHERE DID  
20 THIS OCCUR?

21 A. EIGHT BLUE.

22 Q. EIGHT BLUE, WAKE COUNTY JAIL?

23 A. WAKE COUNTY JAIL.

24 Q. AND DO YOU KNOW THESE INDIVIDUALS?

25 A. I DON'T KNOW THEM FROM ANY PREVIOUS -- NO, NOT



1 PREVIOUSLY, JUST FROM THAT POD WE WERE IN.

2 Q. DID YOU RECOGNIZE AT LEAST ONE OF THEM?

3 A. YEAH, I RECOGNIZED ONE OF THEM.

4 Q. WHO WAS THAT?

5 A. ERVIN VASQUEZ.

6 Q. DID MR. VASQUEZ INITIATE THE CONVERSATION?

7 A. YES.

8 Q. CAN YOU TELL US ABOUT THAT CONVERSATION?

9 A. WELL, HE TOLD ME THAT SOMEHOW THEY FOUND OUT  
10 INFORMATION THAT -- GUYS COME BACK FROM FRANKLIN COUNTY  
11 JAIL ALL THE TIME, BECAUSE THE GUY RUNNING THE FRANKLIN  
12 COUNTY JAIL, YOU DO ANYTHING WRONG, HE'LL SEND YOU RIGHT  
13 BACK TO WAKE COUNTY.

14 Q. AT THE TIME I BELIEVE MR. NUNEZ HAD BEEN REMOVED OR  
15 TAKEN OUT OF WAKE COUNTY AND PLACED AT FRANKLIN COUNTY  
16 JAIL?

17 A. RIGHT.

18 Q. THAT WAS AT MY REQUEST?

19 A. RIGHT.

20 Q. ONCE YOUR LETTER BECAME PUBLIC, IF YOU WILL, TO THE  
21 DEFENDANT?

22 A. RIGHT.

23 Q. OKAY. PLEASE CONTINUE.

24 A. OKAY. SO I'M SPECULATING THIS IS HOW HE FOUND THE  
25 INFORMATION OUT, IS WHEN ANOTHER HISPANIC MALE WAS

1 TRANSFERRED BACK FROM FRANKLIN COUNTY JAIL FOR FIGHTING  
2 WITH SOMEBODY, THEY WERE MOVED TO A POD ACROSS THE HALL.  
3 SO THEY WERE COMMUNICATING THROUGH THE WINDOWS. THE OTHER  
4 THREE HISPANIC MALES WITH THIS ONE THAT CAME FROM FRANKLIN  
5 COUNTY, SO THIS IS MY SPECULATION ABOUT HOW THEY FOUND OUT  
6 THE SITUATION --

7 **MR. ASHTON:** OBJECTION TO SPECULATION.

8 **THE COURT:** SUSTAINED.

9 **BY MR. ONTJES:**

10 **Q.** LET'S NOT SPECULATE. DID THIS INDIVIDUAL THAT YOU  
11 IDENTIFIED TELL YOU ANYTHING, AS FAR AS THE MESSAGE FROM  
12 THE DEFENDANT?

13 **MR. ASHTON:** OBJECTION.

14 **THE COURT:** OVERRULED.

15 **A.** YES.

16 **THE COURT:** WHAT DID VASQUEZ SAY TO YOU?

17 **THE WITNESS:** HE TOLD ME HE HEARD SOMEBODY  
18 SNITCHING ON MR. NUNEZ ON HIS CASE, AND WE REFERRED TO HIM  
19 AS L.A.

20 **Q.** IS L.A. MR. NUNEZ'S NICKNAME?

21 **A.** YES. WE HEARD SOMEBODY WAS SNITCHING ON L.A. AND  
22 THEY WOULD TAKE CARE OF IT, THEY WOULD TALK TO ME MORE  
23 ABOUT IT WHEN WE CAME BACK OUT. SO THEY GO IN THE CELL,  
24 COME BACK OUT OF THE CELL AFTER LOCKDOWN AND THEY COME  
25 BACK TO MY CELL WITH HIS HANDS IN HIS PANTS, HIM AND TWO

1 OTHER GUYS.

2 Q. HIM BEING WHO?

3 A. ERVIN VASQUEZ.

4 Q. OKAY.

5 A. HE COMES UP TO MY CELL. HE HAD HIS HANDS IN HIS  
6 PANTS THE WHOLE TIME LOOKING NERVOUS, TALKING. HE SAID,  
7 "YEAH, I KNOW ABOUT IT, YOU KNOW. I FOUND OUT WHAT WAS  
8 GOING ON." YEAH. HE SAID, "YEAH. HE TOLD ME TO GIVE YOU  
9 THIS." HE TOOK HIS HANDS OUT OF HIS PANTS. HE HAD A  
10 SHARP INSTRUMENT IN HIS PANTS MAYBE A TOOTHBRUSH SHARPENED  
11 UP.

12 Q. WHO HAD THE SHARPENED TOOTHBRUSH?

13 A. ERVIN VASQUEZ.

14 Q. WHAT DID HE DO WITH IT?

15 A. HE SWUNG IT AT ME, HIT ME IN MY HAND. WE WAS INSIDE  
16 THE CELL. WE BEGAN TO TUSSLE. THE OTHER TWO GUYS CAME  
17 IN, I'M TUSSLING WITH THEM AS WELL.

18 Q. WHEN YOU SAY "TUSSLE," WHAT DID YOU DO TO DEFEND  
19 YOURSELF, MR. ALLEN?

20 A. I SECURED THEM WITH A BODY SLAM TO THE BED. THE  
21 WEAPON FELL OUT OF HIS HAND. I SECURED MYSELF TO THE BACK  
22 OF MY WALL, WITH MY BACK TO THE WALL, SO ONLY ONE CAN COME  
23 AT A TIME. I HIT THE SECOND ONE AND HE WENT DOWN. I WENT  
24 AFTER THE THIRD ONE, BUT HE RAN OUT THE CELL AND I RAN OUT  
25 OF THE CELL AS WELL. I WENT TO THE BACK OF THE HALLWAY,

1 SECURED MY BACK TO THE WALL, THEN THEY ALL LEFT OUT OF THE  
2 CELL.

3 Q. AT THAT TIME THEY ALL DISPERSED?

4 A. YES.

5 Q. DID YOU REPORT THIS TO THE JAILER?

6 A. NO. I DIDN'T FEEL COMFORTABLE BEING AROUND THEM BUT  
7 I DIDN'T WANT TO REPORT IT.

8 Q. WHY NOT?

9 A. THEN I WOULD HAVE A REPUTATION IN THE JAIL OF GETTING  
10 SOMEBODY IN TROUBLE.

11 Q. SO YOU WERE AFRAID FOR YOUR SAFETY IF YOU REPORTED  
12 IT?

13 A. YES.

14 Q. SO WHAT DID YOU DO?

15 A. I STARTED ARGUING WITH THE OFFICERS. THEY SENT ME TO  
16 THE HOLE.

17 Q. WHY DID YOU WANT TO GO TO THE HOLE?

18 A. I DIDN'T FEEL COMFORTABLE AROUND THEM. SO FOR MY  
19 SAFETY. I MEAN, WE GOT TO SLEEP EVENTUALLY SOMEHOW, SO IF  
20 SOMETHING HAPPENED.

21 Q. IN ADDITION TO THAT INCIDENT THAT OCCURRED IN YOUR  
22 JAIL CELL, DID YOU LEARN ABOUT ANOTHER INCIDENT INVOLVING  
23 YOUR FIANCEE AND YOUR SMALL CHILD?

24 A. YES. WELL, AFTER I TALKED TO HER, SHE --

25 MR. ASHTON: OBJECTION.

1           **THE COURT:** OVERRULED. GO AHEAD.

2           **THE WITNESS:** AFTER I TALKED TO HER, SHE SAID  
3 TWO HISPANIC MALES WAS DRIVING BEHIND HER AND KEPT DRIVING  
4 CLOSER AND CLOSER. SHE WOULD SPEED UP, SPEED UP, THINKING  
5 MAYBE THEY WERE DRUNK OR SOMETHING. THEN SHE SAID HE  
6 DROVE UP EVEN HARDER AND KIND OF BUMPED HER, LIKE TO DRIVE  
7 HER OFF THE ROAD. SHE SWERVED OFF. SHE SEEN A KANGAROO  
8 AND SEEN AN OFFICER OVER THERE. SHE PULLED INTO THE  
9 KANGAROO AND THEY SPED OFF.

10 **BY MR. ONTJES:**

11 **Q.** YOUR CHILD WAS IN THE CAR AT THE TIME?

12 **A.** YES.

13 **Q.** THIS OCCURRED AFTER THE LETTER THAT YOU PROVIDED TO  
14 AGENT YORK DETAILING THAT?

15 **A.** YES.

16 **MR. ONTJES:** YOUR HONOR, THAT'S ALL I HAVE.

17 **THE COURT:** CROSS-EXAMINATION.

18 **CROSS-EXAMINATION**

19 **BY MR. ASHTON:**

20 **Q.** MR. ALLEN, YOU PLED GUILTY TO WHAT, ARMED BANK  
21 ROBBERY AND BRANDISHING A FIREARM DURING THE ROBBERY,  
22 CORRECT?

23 **A.** YES.

24 **Q.** DID YOU EVER GET A SUBSTANTIAL ASSISTANCE MOTION?

25 **A.** NO.

1 Q. DID YOU EVER GET A 5K FILED ON YOUR BEHALF?

2 A. I DON'T BELIEVE SO. I'M NOT SURE.

3 Q. NOW, PRIOR TO THESE CHARGES, WHAT HAVE YOU BEEN  
4 CONVICTED OF?

5 A. ARMED ROBBERY.

6 Q. UP IN VIRGINIA?

7 A. YES.

8 Q. HOW ABOUT KIDNAPPING?

9 A. YES. ABDUCTION.

10 Q. A SEPARATE OFFENSE?

11 A. NO. IT WAS ALTOGETHER. ONE CHARGE WAS DROPPED. IT  
12 WAS ATTEMPTED ROBBERY, ENTERING INTO A RESIDENCE, HOLDING  
13 SOMEBODY AGAINST THEIR WILL. ROBBERY WAS DROPPED AND IT  
14 WAS JUST HOLDING SOMEBODY AGAINST THEIR WILL AND ENTERING  
15 INTO THE HOUSE UNLAWFULLY.

16 Q. ALL RIGHT. AND THEN WHEN YOU GOT PICKED UP ON THE  
17 BANK ROBBERY HERE, YOU SIGNED A PLEA AGREEMENT, RIGHT?

18 A. YES.

19 Q. AND BASICALLY YOU AGREED TO COOPERATE WITH THE  
20 GOVERNMENT; IS THAT TRUE?

21 A. YES, SIR.

22 Q. AND THEY WERE GOING TO GIVE YOU IMMUNITY FROM ANY  
23 OTHER CHARGES; IS THAT RIGHT?

24 A. NO. IMMUNITY IS WHEN YOU --

25 Q. IMMUNITY. THEY WEREN'T GOING TO CHARGE YOU WITH

1 ANYTHING ELSE, WERE THEY?

2 **A.** NO.

3 **Q.** I BELIEVE THE PLEA AGREEMENT DISMISSED COUNT THREE AS  
4 WELL; IS THAT RIGHT?

5 **A.** YES.

6 **Q.** WHAT WAS COUNT THREE?

7 **A.** GUN BY CONVICTED FELONY.

8 **Q.** WHAT?

9 **A.** HAVING A GUN BY A CONVICTED FELON.

10 **Q.** FIREARM BY A FELON?

11 **A.** YES.

12 **Q.** DID THEY ALSO AGREE TO A REDUCTION OF THREE LEVELS  
13 FOR ACCEPTANCE OF RESPONSIBILITY, CORRECT?

14 **A.** YES.

15 **Q.** AND YOU EVENTUALLY GOT SENTENCED TO 138-MONTHS JUST  
16 SEVERAL WEEKS AGO?

17 **A.** YES.

18 **Q.** NOW, YOU BEFRIENDED MR. NUNEZ AT THE WAKE COUNTY  
19 JAIL, RIGHT?

20 **A.** YES.

21 **Q.** BUT IT WAS YOUR PURPOSE TO TRY TO FIND SOME  
22 INFORMATION TO HELP YOURSELF; WAS IT NOT?

23 **A.** NO.

24 **Q.** YOU DIDN'T WANT TO GET SOME INFORMATION TO SEE IF YOU  
25 COULD GET YOURSELF A SUBSTANTIAL ASSISTANCE MOTION?

1     **A.**     NO.    I WAS ALREADY SUPPOSED TO RECEIVE SUBSTANTIAL  
2     ASSISTANCE MOTION FOR OTHER INFORMATION.    I WAS TOLD IT  
3     DOESN'T MATTER HOW MUCH INFORMATION YOU TELL, IT'S GOING  
4     TO BE THE SAME THING.

5     **Q.**     WELL, THAT'S NOT TRUE NOW.    THE MORE INFORMATION YOU  
6     HAVE AND THE MORE YOU COOPERATE, THE BETTER YOUR SENTENCE  
7     MIGHT BE; IS THAT NOT TRUE?

8     **A.**     POSSIBLY IT COULD BE TRUE, BUT THAT WASN'T MY INITIAL  
9     INTENTIONS.

10    **Q.**     THIS PIECE OF PAPER, EXHIBIT NO. 1, IS THE ONLY  
11    PERSON YOU SHOWED THAT TO YOUR ATTORNEY?

12    **A.**     YES, SIR.

13    **Q.**     ALL RIGHT.    YOU DIDN'T PASS IT ONTO ANYBODY ELSE,  
14    RIGHT?

15    **A.**     NO.

16    **Q.**     OKAY.    AND YOUR ATTORNEY AT THE TIME WAS MR.  
17    TRABUCCO, RIGHT?

18    **A.**     YES.

19    **Q.**     I BELIEVE YOU SAID YOU DIDN'T PLAN ON GETTING OUT AND  
20    DOING ANYTHING WITH THESE PEOPLE, DID YOU?

21    **A.**     NO.

22    **Q.**     YOU NEVER PASSED ANY INFORMATION ONTO MR. JONES OR  
23    MR. BROGDEN OR MR. MORGAN?

24    **A.**     NO.

25    **Q.**     DID YOU CALL ANYONE ON THE OUTSIDE ABOUT THIS?



1     **A.**     NO.

2     **Q.**     DID YOU WRITE TO ANYBODY ON THE OUTSIDE ABOUT THIS?

3     **A.**     NO.

4     **Q.**     DID YOU ASK ANYBODY TO LOOK INTO IT?

5     **A.**     NO.

6     **Q.**     DID YOU DO ANYTHING TO POSSIBLY WARN MR. JONES OR  
7     MR. BROGDEN OR MR. MORGAN?

8     **A.**     NO.

9     **Q.**     DIDN'T CALL ANYBODY ABOUT THAT EITHER, RIGHT?

10    **A.**     NO.

11    **Q.**     NOW, IT WAS SOMETIME LATER YOU WROTE THIS LETTER TO,  
12    IS IT PATTY BAKER, THAT WAS EXHIBIT NO. 2?

13    **A.**     YES.

14    **Q.**     DO YOU STILL HAVE THAT IN FRONT OF YOU?

15    **A.**     YES.

16    **Q.**     I KNOW IT'S AN EXHIBIT, BUT I'D LIKE YOU TO JUST TO  
17    READ IT TO THE COURT.

18            **THE COURT:**   WELL, HOW ABOUT IF YOU JUST HAND IT  
19    TO ME AND I'LL READ IT.   IT WILL SAVE A LITTLE TIME.

20            (PAUSE IN THE PROCEEDINGS.)

21            ALL RIGHT.   I HAVE READ IT.   IT IS PART OF THE RECORD  
22    AS GOVERNMENT'S EXHIBIT 2.   NEXT QUESTION.

23    **BY MR. ASHTON:**

24    **Q.**     MR. ALLEN, ARE YOU SURE YOU DIDN'T WRITE SOME OF THIS  
25    INFORMATION ON EXHIBIT 1?

1     **A.**     YES.

2     **Q.**     YOU ARE POSITIVE?

3     **A.**     YES.

4     **Q.**     HAVE YOU GOT THAT IN FRONT OF YOU?

5     **A.**     YES.

6     **Q.**     EXHIBIT 1 IS THIS (INDICATING). DO YOU HAVE BOTH OF  
7     THEM IN FRONT OF YOU?

8     **A.**     YES.

9     **Q.**     LOOK AT THE P ON PATTY AND THE P ON PHILLIP MORGAN.

10           **MR. ONTJES:** I'M GOING TO OBJECT. I THINK THE  
11     WITNESS ANSWERED THE QUESTION ON WHETHER HE WROTE THE  
12     LETTER, AND HE ANSWERED HE DID NOT. THEREFORE, I THINK  
13     THIS NEXT LINE OF QUESTIONING REALLY --

14           **THE COURT:** OVERRULED. I'LL LET MR. ASHTON  
15     DEVELOP THIS FOR A LITTLE BIT. GO AHEAD. DO YOU  
16     UNDERSTAND THE QUESTION, MR. ALLEN?

17           **THE WITNESS:** YES.

18           **THE COURT:** NEXT QUESTION.

19     **BY MR. ASHTON:**

20     **Q.**     DID YOU NOT WRITE BOTH OF THOSE P'S, THE PATTY AND  
21     PHILLIP?

22           **THE COURT:** ASKED AND ANSWER. OBJECTION  
23     SUSTAINED. NEXT QUESTION.

24     **BY MR. ASHTON:**

25     **Q.**     LOOK AT THE LL IN YOUR OWN NAME, LEWIS ALLEN. DO YOU

1 SEE THAT? I THINK IT'S ON THE SECOND PAGE OF EXHIBIT  
2 NO. 2.

3 **A.** YES.

4 **Q.** LOOK AT THE LL ON EXHIBIT 1 IN GRANVILLE AND PHILLIP.  
5 DO THOSE LL'S LOOK IDENTICAL TO YOU?

6 **A.** NO.

7 **Q.** YOU SURE YOU DIDN'T WRITE BOTH OF THOSE?

8 **A.** I'M SURE.

9 **Q.** HOW ABOUT THE NC. LOOK AT THE NC ON EXHIBIT NO. 2  
10 DOWN THERE UNDER YOUR NAME. YOU GOT RALEIGH SPELLED WRONG  
11 BUT YOU HAVE NC AFTER THAT. SEE THAT?

12 **A.** ON EXHIBIT 2?

13 **Q.** EXHIBIT 1, OXFORD, NORTH CAROLINA, NC. YOU STILL  
14 SAYING YOU DIDN'T WRITE BOTH OF THOSE?

15 **A.** NO. I DIDN'T.

16 **Q.** NOW, YOU ARE SAYING YOU WROTE THE LETTER TO PATTY  
17 BECAUSE YOU WANTED SOMEBODY TO THANK YOU FOR KEEPING YOUR  
18 MOUTH SHUT, RIGHT?

19 **A.** ANY FORM OF APPRECIATION.

20 **Q.** WHAT ELSE DID YOU WANT BESIDES APPRECIATION?

21 **A.** NOTHING ELSE I CAN HAVE BESIDES APPRECIATION. LIKE I  
22 SAID BEFORE, ONE OF THEM LIVES IN A ONE BEDROOM APARTMENT  
23 WITH A ROOMMATE WORKING AT MANUAL LABOR JOB, SELLING GUNS  
24 ON THE SIDE. FINANCIALLY THERE'S NOTHING ELSE THEY CAN DO  
25 FOR ME, EXCEPT MAYBE BRING UP MY FIANCEE TO SEE ME, CHANGE

1 A TIRE FOR HER, OR ANYTHING.

2 Q. PATTY ACTUALLY STRAW PURCHASED WEAPONS FOR OTHER  
3 PEOPLE, RIGHT?

4 A. YES.

5 Q. SHE PURCHASED THIS GUN FOR HEATH FLANAGAN. IS THAT  
6 HIS NAME?

7 A. I KNOW HIS NAME IS HEATH. I DON'T KNOW HIS LAST NAME  
8 IS FLANAGAN.

9 Q. YOU GOT IT FROM HIM?

10 A. YES. I PURCHASED IT FROM HIM.

11 Q. THAT'S THE SAME WEAPON THAT WAS USED IN THE BANK  
12 ROBBERY?

13 A. YES.

14 Q. AND YOU INITIALLY WOULDN'T GIVE ANY NAMES ABOUT  
15 ANYTHING TO THE AGENT ABOUT THAT, DID YOU?

16 A. NO.

17 Q. AND THAT LAST INSTANCE YOU WERE TALKING ABOUT, ERVIN  
18 RODRIGUEZ OR VASQUEZ, WHATEVER HIS NAME IS?

19 A. VASQUEZ, YES.

20 Q. MR. NUNEZ WAS NOT EVEN AROUND WAKE COUNTY AT THAT  
21 TIME, WAS HE?

22 A. NO.

23 Q. IN FACT, HE HAS BEEN IN GRANVILLE COUNTY SINCE  
24 JANUARY OR FEBRUARY?

25 A. I KNOW HE HAS BEEN IN GRANVILLE COUNTY. I THINK HE

1 WAS IN GRANVILLE COUNTY BEFORE HE ACTUALLY CAME TO WAKE  
2 COUNTY. HE WAS IN FRANKLIN COUNTY.

3 Q. ARE YOU A BLACK BELT IN MARSHAL ARTS?

4 A. GINSU.

5 Q. SO YOU ARE SAYING VASQUEZ ASSAULTED YOU WITH A  
6 TOOTHBRUSH?

7 A. SHARPENED TOOTHBRUSH.

8 Q. BUT YOU WERE ABLE TO TAKE CARE OF YOURSELF, CORRECT?

9 A. YES.

10 Q. YOU DIDN'T REPORT THIS TO ANYBODY AT THE WAKE COUNTY  
11 JAIL, DID YOU?

12 A. NO.

13 Q. IT WAS ONLY AS YOU GOT CLOSER TO YOUR OWN SENTENCING  
14 THAT YOU DECIDED TO MAKE THIS KNOWN?

15 A. NO. I MADE IT KNOWN THE SECOND DAY, SOON AS I SEEN  
16 KYLE YORK.

17 MR. ASHTON: THAT'S ALL THE QUESTIONS I HAVE.

18 MR. ONTJES: BRIEFLY, IF I MAY.

19 **REDIRECT EXAMINATION**

20 BY MR. ONTJES:

21 Q. MR. ALLEN, YOU SIGNED AND GAVE YOUR ADDRESS ON THIS  
22 LETTER THAT YOU WROTE TO PATTY, DIDN'T YOU?

23 A. YEAH.

24 Q. YOU WEREN'T TRYING TO CONCEAL YOUR IDENTITY OR  
25 ANYTHING WHEN YOU SENT THIS LETTER, WERE YOU?

1     **A.**     NO.

2                 **MR. ONTJES:**   NOTHING FURTHER.

3                 **THE COURT:**   THANK YOU, MR. ALLEN.   THAT'S ALL  
4     FOR MR. ALLEN.

5                 **MR. ONTJES:**   THAT WOULD BE THE GOVERNMENT'S  
6     EVIDENCE AS TO THE OBSTRUCTION.

7                 **THE COURT:**   AND ACCEPTANCE.   I THINK THAT  
8     THEY'RE COMBINED.

9                 **MR. ONTJES:**   YES, SIR.

10                **THE COURT:**   MR. ASHTON, DID YOU WANT TO PUT ON  
11     ANY EVIDENCE BEYOND THE CROSS-EXAMINATION?   I HEARD THE  
12     ARGUMENTS.   ANYTHING ELSE FROM THE DEFENSE ON THOSE  
13     OBJECTIONS?

14                **MR. ASHTON:**   NO EVIDENCE.   I'D LIKE TO BE HEARD  
15     AT THE APPROPRIATE TIME.

16                **THE COURT:**   I'LL HEAR YOU RIGHT NOW.

17                **MR. ASHTON:**   THANK YOU, YOUR HONOR.   YOUR HONOR,  
18     I KNOW THE CREDIBILITY ISSUE OF WITNESSES IS UP TO THE  
19     COURT TO DECIDE.   I THOUGHT IT WOULD BE APPROPRIATE TO  
20     HAVE YOU HEAR FROM MR. ALLEN.   MAYBE NOT, BUT I THOUGHT IN  
21     THE BEST INTEREST OF MY CLIENT, I THOUGHT YOU AT LEAST  
22     NEEDED TO TEST HIS CREDIBILITY.

23                I'M NOT A HANDWRITING EXPERT.   I DON'T KNOW  
24     HANDWRITING ANALYSIS HERE, BUT I DID POINT OUT CERTAIN  
25     THINGS OF THESE -- THE LETTER AND THE WRITING OF THOSE

1 NAMES AS TO WHO MAY HAVE PRINTED THEM. I CERTAINLY THINK  
2 A LOT OF THE CAPITAL LETTERS, THE DOUBLE L'S, THE P'S, NC  
3 ARE VERY SIMILAR.

4 MR. NUNEZ IS NOT DENYING THAT HE DID NOT MEET WITH  
5 MR. -- TALK WITH MR. ALLEN ABOUT SOME OF THESE THINGS, AND  
6 THERE IS SOME INFORMATION THERE, BUT IF MR. ALLEN IS NOT  
7 BEING TRUTHFUL ABOUT WHO WROTE SOME OF THAT DOWN, I DON'T  
8 KNOW IF HE CAN BE BELIEVED.

9 HE ALSO IS VERY AWARE OF SUBSTANTIAL --

10 **THE COURT:** WHAT'S YOUR THEORY ABOUT HOW  
11 MR. ALLEN GOT THESE PICTURES? WHERE WOULD MR. ALLEN GET  
12 THE INFORMATION, SOCIAL SECURITY NUMBERS, DATE OF BIRTH,  
13 AGE, PHONE NUMBERS, PICTURES? DO YOU HAVE A THEORY ON  
14 THAT, OR IS YOUR THEORY THAT HE WROTE SOME OF THE LETTERS  
15 ON HERE AND SOMEONE ELSE WROTE THE REST, OR HE WROTE IT  
16 ALL? WHAT IS THE THEORY? IS THERE ONE, ON EXHIBIT 1?

17 **MR. ASHTON:** I THINK THE THEORY, AS I KNOW IT,  
18 IS I THINK MR. NUNEZ ADMITTED TO MR. YORK THAT THEY HAD  
19 TALKED ABOUT THIS. IT'S MY UNDERSTANDING THAT MR. ALLEN  
20 WROTE SOME OF THIS INFORMATION. I THINK MR. ONTJES WAS  
21 CORRECT IN THAT THERE'S DISCOVERY UP THERE IN THE CELL.  
22 NOW WHETHER MR. NUNEZ GAVE IT TO MR. ALLEN, MR. ALLEN GOT  
23 IT SOMEWHERE ELSE, IT OBVIOUSLY COMES FROM DISCOVERY.

24 **THE COURT:** SO YOUR THEORY IS THAT MR. ALLEN  
25 DIDN'T WRITE ALL OF EXHIBIT 1, HE WROTE SOME OF IT?

1           **MR. ASHTON:** YES. BUT THE IMPORTANT --

2           **THE COURT:** WHAT DO YOU THINK HE DIDN'T WRITE?  
3 THAT'S KIND OF STRANGE AS A THEORY, BUT I'M CURIOUS. WHAT  
4 DO YOU THINK HE DIDN'T WRITE?

5           **MR. ASHTON:** WELL, WHAT I'M GETTING AT IS THE  
6 CREDIBILITY OF MR. ALLEN, IF HE WROTE ANY OF IT, HE'S NOT  
7 TOLD THE TRUTH HERE TODAY.

8           **THE COURT:** OKAY.

9           **MR. ASHTON:** SECONDLY, IF YOU READ -- AND YOU  
10 READ HIS LETTER, HE'S VERY AWARE OF THE FEDERAL SYSTEM. I  
11 THINK IT SAYS, THE FEDS WORKS, YOU SHOULD KNOW I CAN GET A  
12 TIME CUT FOR MY TESTIMONY. SO IN WRITING THIS MISS BAKER,  
13 OBVIOUSLY MR. ALLEN KNOWS HOW THE SYSTEM WORKS. HE'S  
14 TRYING TO WORK THE SYSTEM. WE WOULD CERTAINLY CONTEND  
15 THIS LATEST INCIDENT THAT I FOUND OUT ABOUT THIS MORNING,  
16 WHICH WAS NEVER REPORTED. I DON'T KNOW IF IT REALLY  
17 HAPPENED OR NOT, BUT MR. ALLEN WRITES THAT AFTER  
18 APPARENTLY MAYBE NOT GETTING A SUBSTANTIAL ASSISTANCE  
19 MOTION OR TRYING TO GET A RULE 35 OR WHATEVER HE'S TRYING  
20 TO DO. SO WE WOULD CERTAINLY ARGUE THAT HIS TESTIMONY IS  
21 NOT COMPLETELY CREDIBLE.

22           THE OTHER ARGUMENT I WOULD MAKE THOUGH, IS THAT  
23 THE -- EVEN IF YOU BELIEVE MR. ALLEN, THIS WAS A STATEMENT  
24 TO A THIRD PARTY. IT WAS NEVER PASSED ONTO ANYBODY BUT  
25 HIS LAWYER, SO HE COULD PROBABLY GET SOME HOPEFULLY



1 SUBSTANTIAL ASSISTANCE. IT WAS NEVER PASSED ONTO  
2 MR. JONES OR MORGAN. NO ACTION WAS EVER TAKEN WHATSOEVER,  
3 AND THE ONLY CASE I COULD FIND IN THIS CIRCUIT THAT EVEN  
4 SORT OF SPEAKS TO THIS IS THE *UNITED STATES VERSUS BROOKS*,  
5 WHICH IS A 1992 CASE.

6 **THE COURT:** 957 F.2D 1138. I READ IT. HOW DO  
7 YOU THINK THAT CASE HELPS YOU?

8 **MR. ASHTON:** I THINK IT HELPS ME BECAUSE THEY,  
9 IN THAT PARTICULAR CASE, APPARENTLY THERE WAS A VEIL  
10 THREAT TO A DEPUTY MARSHAL THAT NEVER WAS PASSED ONTO THE  
11 ALLEGED TARGET. THE 4TH CIRCUIT FOUND BASICALLY, WE DO  
12 NOT BELIEVE THAT THE COMMENT AS TO WHICH THE DEPUTY  
13 TESTIFIED STANDING ALONE COULD SUPPORT AN ENHANCEMENT FOR  
14 OBSTRUCTION OF JUSTICE UNDER SECTION 3C1.1.

15 NOW, SECTION 3C1.1 REQUIRES THE DEFENDANT EITHER  
16 THREATEN THE CO-DEFENDANT, WITNESS, OR JUROR IN HIS OR HER  
17 PRESENCE, OR ISSUE A THREAT AND CIRCUMSTANCES IN WHICH  
18 THERE'S SOME LIKELIHOOD THAT THE CO-DEFENDANT, WITNESS, OR  
19 JUROR WILL LEARN OF THE THREAT. NOT ONLY IS THERE NO  
20 EVIDENCE IN THIS RECORD THAT PATTERSON EVER LEARNED OF  
21 BROOKS' THREAT, THERE'S NO BASIS FROM CONCLUDING FROM THE  
22 CIRCUMSTANCES IN WHICH THE THREAT WAS MADE THAT PATTERSON  
23 MIGHT LEARN OF THE THREAT. IT'S NOT EVEN CLEAR THAT  
24 BROOKS ACTUALLY EVEN INTENDED THAT PATTERSON LEARN OF THE  
25 THREAT.

1           **THE COURT:** BUT ISN'T THERE A DIFFERENCE IN  
2 OBSTRUCTION? THERE'S OBSTRUCTION WHERE IT'S, IF YOU  
3 COOPERATE I'M GOING TO KILL YOU VERSUS I WANT THESE PEOPLE  
4 DEAD. RIGHT? AREN'T THOSE TWO DIFFERENT CONCEPTUALLY,  
5 LEGALLY DIFFERENT THINGS IN APPLYING THIS ENHANCEMENT AND  
6 ISN'T *BROOKS* DEALING WITH A SITUATION WHERE THE THEORY OF  
7 THE OBSTRUCTION WAS, I WANT THESE WITNESSES TO KNOW I HAVE  
8 THE ABILITY TO GET THEM KILLED, THEY BETTER SHUT UP. AS  
9 DISTINCT FROM THE EVIDENCE, IF BELIEVED, HERE IS, I WANT  
10 THESE PEOPLE DEAD. THIS ISN'T, GO THREATEN THEM. IT'S,  
11 KILL THEM. 20 GRAND ON THIS HEAD, 20 GRAND ON THIS HEAD,  
12 30 GRAND ON THIS HEAD. ISN'T *BROOKS* JUST COMPLETELY  
13 DISTINGUISHABLE ON THAT BASIS, DON'T YOU THINK?

14           **MR. ASHTON:** WELL, NOT REALLY, YOUR HONOR,  
15 BECAUSE, I MEAN, BASICALLY IN OUR CASE THESE PEOPLE WERE  
16 NOT COMING IN TO TESTIFY. THEY ALL PLED GUILTY. IT WAS  
17 SORT OF OVER. AS I SAID BEFORE, I THINK JUST A LOT OF  
18 TALK BETWEEN PEOPLE AND LEWIS ALLEN DECIDED TO SEE IF HE  
19 COULD HELP HIMSELF WITH IT.

20           **THE COURT:** OKAY.

21           **MR. ASHTON:** SO WE ARE -- I'M JUST ARGUING WHAT  
22 I CAN ARGUE.

23           **THE COURT:** I'M JUST TRYING TO UNDERSTAND THE  
24 THEORY, THAT'S ALL, BECAUSE I HAVE READ *BROOKS* AND I  
25 UNDERSTAND WHAT *BROOKS* IS.

1           **MR. ASHTON:** I BELIEVE HE ACTUALLY HAD A DIRECT  
2 THREAT THAT THEY DIDN'T PRESENT, SO WHEN THEY REMANDED IT,  
3 MR. BROOKS PROBABLY ENDED UP WITH THE ENHANCEMENT LATER  
4 ANYWAY.

5           **THE COURT:** AT LEAST -- CORRECT ME IF I'M WRONG,  
6 IN *BROOKS* YOU ALSO DON'T HAVE AGENTS ACTUALLY INTERVIEWING  
7 THAT DEFENDANT AND HIM ADMITTING TO THE SUBSTANCE OF THE  
8 CONVERSATION EITHER, RIGHT? YOU DIDN'T HAVE -- THAT  
9 WASN'T PRESENT IN *BROOKS*.

10           **MR. ASHTON:** RIGHT. I AGREE. THAT'S MY  
11 PRESENTATION ON THIS. AND THEN, OF COURSE, ACCEPTANCE OF  
12 RESPONSIBILITY. I UNDERSTAND THERE'S AN APPLICATION NOTE  
13 THAT BASICALLY INDICATES THAT IF YOU HAVE OBSTRUCTION YOU  
14 CAN'T GET AN ACCEPTANCE EXCEPT UNDER EXTRAORDINARY  
15 CIRCUMSTANCES. BUT WE WOULD CERTAINLY ARGUE HERE THAT MR.  
16 NUNEZ STILL SHOULD GET HIS ACCEPTANCE OF RESPONSIBILITY.

17           OF COURSE, THERE ARE OBVIOUSLY NO CASES EXACTLY LIKE  
18 THIS ONE EITHER, BUT HE DID PLEAD GUILTY PRE-INDICTMENT BY  
19 AN INFORMATION, AS A MATTER OF FACT. HE DID SIGN A PLEA  
20 AGREEMENT. HE HAS BEEN DEBRIEFED SEVERAL TIMES. HE  
21 ACCEPTED RESPONSIBILITY IN THE PLEA AGREEMENT. HE  
22 ACCEPTED RESPONSIBILITY TO THE PROBATION OFFICER WHEN HE  
23 INTERVIEWED WITH HIM, AND I WOULD JUST ARGUE THIS MIGHT BE  
24 THE TYPE OF CASE, IF YOU DO FIND OBSTRUCTION, THAT YOU CAN  
25 STILL FIND THE ACCEPTANCE AND THAT WOULD BE A PROPER LEGAL

1 DETERMINATION.

2 **THE COURT:** THANK YOU, MR. ASHTON. I'LL HEAR  
3 FROM MR. ONTJES.

4 **MR. ONTJES:** YOUR HONOR, I WOULD ASK THE COURT  
5 TO APPLY THE OBSTRUCTION AS WELL AS TAKING AWAY THIS  
6 DEFENDANT'S ACCEPTANCE OF RESPONSIBILITY. UNDER 3C1.1,  
7 APPLICATION NOTE 4A, NOT ONLY IS THE OBSTRUCTION  
8 APPLICABLE WHERE A DEFENDANT THREATENS OR INTIMIDATES A  
9 WITNESS, AS THE CASE HERE, BUT ATTEMPTS TO DO SO. I'M  
10 READING THAT AT PAGE 348.

11 IN THIS CASE, YOUR HONOR, AS MR. ALLEN TESTIFIED AND  
12 AS AGENT YORK TESTIFIED, THIS DEFENDANT ADMITTED TO  
13 ATTEMPTING TO HAVE THESE WITNESSES KILLED. I WOULD SUBMIT  
14 THE PURPOSE OR MOTIVE IS BECAUSE HE BELIEVED THESE  
15 INDIVIDUALS WERE GOING TO SIGNIFICANTLY INCREASE HIS DRUG  
16 AMOUNT THAT WOULD ADVERSELY AFFECT HIS SENTENCING.

17 **THE COURT:** AND IN MAKING THIS ARGUMENT,  
18 MR. ONTJES, IT IS THE POSITION OF THE UNITED STATES THAT  
19 PURSUANT TO THE CLAUSE IN PARAGRAPH FIVE OF THE PLEA  
20 AGREEMENT, THAT THE DEFENDANT'S CONDUCT PRIOR TO  
21 SENTENCING CHANGED THE CIRCUMSTANCES WITH RESPECT TO THE  
22 GOVERNMENT'S AGREEMENT TO MAKE A RECOMMENDATION AT  
23 SENTENCING FOR A THREE LEVEL DOWNWARD ADJUSTMENT, RIGHT?

24 SO YOU TAKE THE POSITION THAT RIGHT NOW YOU ARE  
25 ACTING COMPLETELY IN CONFORMITY WITH IT BECAUSE ALL OF

1     THESE EVENTS TOOK PLACE AFTER THE 22 AUGUST 2008, PLEA  
2     AGREEMENT THAT WAS FILED ON SEPTEMBER 4, 2008, CORRECT?

3             **MR. ONTJES:**   YES, SIR.   AND THANK YOU FOR  
4     BRINGING THAT TO MY ATTENTION.   I WOULD ASK THE COURT, AND  
5     I THINK THE COURT HAS ALREADY DONE THIS, TO MAKE A FINDING  
6     THAT IN FACT THE CIRCUMSTANCES HAD CHANGED.

7             **THE COURT:**   THE COURT DOES SO FIND.

8             **MR. ONTJES:**   THANK YOU, YOUR HONOR.   I WOULD ASK  
9     THE COURT TO APPLY THE TWO-LEVEL ENHANCEMENT FOR  
10    OBSTRUCTION.   THE DEFENDANT'S OWN ADMISSION ITSELF, I  
11    THINK CONSTITUTES BY A PREPONDERANCE OF THE EVIDENCE THAT  
12    HE IN FACT DID ATTEMPT TO HAVE THESE WITNESSES KILLED.   I  
13    BELIEVE, AS THE COURT HAS ALREADY INDICATED, THAT SORT OF  
14    GOES HAND-IN-HAND WITH HIS LOSS OF ACCEPTANCE OF  
15    RESPONSIBILITY.

16            I WOULD SUBMIT, YOUR HONOR, YOU HAVE TWO GROUNDS IN  
17    WHICH THE COURT CAN TAKE AWAY HIS ACCEPTANCE.   NOT ONLY  
18    ONE, THE THREAT TO THE WITNESSES; BUT TWO, THE CONTINUING,  
19    ONGOING INTENT TO CONTINUE THE DRUG OPERATIONS.   THIS  
20    DEFENDANT, WHO IN A CONVERSATION WITH MR. ALLEN TRIED TO  
21    SOLICIT MR. ALLEN IN HIS TRUCKING BUSINESS THROUGH HIS  
22    FAMILY MEMBERS, TO CONTINUE, I THINK IN HIS WORDS, TO  
23    CONTINUE ROLLING.   THAT ONCE MR. ALLEN WAS GOING TO GET  
24    OUT, THAT HE WAS GOING TO CONTACT MR. NUNEZ AS THE  
25    DEFENDANT'S SOURCE IN CALIFORNIA AND THEY WOULD PICK UP

1 WHERE THEY LEFT OFF AND CONTINUE TO TRANSPORT AND  
2 DISTRIBUTE LARGE AMOUNTS OF MARIJUANA AS WELL AS COCAINE  
3 THROUGHOUT THE UNITED STATES.

4 SO FOR BOTH OF THOSE REASONS, YOUR HONOR, AS THE  
5 COURT IS AWARE UNDER 3D1.1, APPLICATION NOTE 1B, I WOULD  
6 SUBMIT THIS DEFENDANT HAS NOT DONE THAT, BY HIS CONTINUED  
7 EFFORTS TO SOLICIT MR. ALLEN TO CONTINUE WITH HIS DRUG  
8 TRADE. BUT YOU ALSO, OF COURSE, UNDER APPLICATION NOTE  
9 FOUR, I THINK AS MR. ASHTON ALREADY INDICATED, WHERE YOU  
10 FIND OBSTRUCTION UNLESS THERE ARE EXTRAORDINARY  
11 CIRCUMSTANCES, AND I WOULD SUBMIT TO THE COURT THERE ARE  
12 NO EXTRAORDINARY CIRCUMSTANCES HERE. IF THE COURT FINDS  
13 OBSTRUCTION, THEN NATURALLY THE ACCEPTANCE WOULD ALSO BE  
14 REMOVED. I WOULD ASK THE COURT TO SO DO. THANK YOU.

15 **THE COURT:** THANK YOU. ALL RIGHT. UNDER  
16 SENTENCING GUIDELINE SECTION 3C1.1, "IF THE DEFENDANT  
17 WILLFULLY OBSTRUCTED OR IMPEDED OR ATTEMPTED TO OBSTRUCT  
18 OR IMPEDE THE ADMINISTRATION OF JUSTICE WITH RESPECT TO  
19 THE INVESTIGATION, PROSECUTION, OR SENTENCING OF THE  
20 INSTANT OFFENSE OF CONVICTION, AND THE OBSTRUCTIVE CONDUCT  
21 RELATED TO THE DEFENDANT'S OFFENSE OF CONVICTION, AND ANY  
22 RELEVANT CONDUCT OR CLOSELY-RELATED OFFENSE, INCREASE THE  
23 OFFENSE LEVEL BY TWO LEVELS."

24 THE COURT HAS CONSIDERED THE EVIDENCE PRESENTED AT  
25 THIS HEARING. THE COURT FOUND AGENT YORK TO BE A VERY

1 CREDIBLE WITNESS IN DESCRIBING THE DRUG ORGANIZATION. THE  
2 COURT ALSO NOTES IT IS DESCRIBED IN THE PRESENTENCE  
3 REPORT. THE ORGANIZATION INVOLVED JONES, AND PHILLIP  
4 MORGAN AND JIMMY BROGDEN. IT ALSO INCLUDED THE DEFENDANT,  
5 MR. NUNEZ.

6 THE COURT HAS RECEIVED AND REVIEWED GOVERNMENT'S  
7 EXHIBITS 1 AND 2. THE COURT CREDITS AGENT YORK'S  
8 TESTIMONY ABOUT HIS INTERVIEW OF MR. NUNEZ TO KILL DAVID  
9 MICHAEL JONES, PHILLIP MORGAN, AND JIMMY BROGDEN. THE  
10 COURT ALSO CREDITS THE TESTIMONY OF MR. LEWIS ALLEN. THE  
11 COURT CREDITS THAT TESTIMONY WITH RESPECT TO THE  
12 CONVERSATION THAT HE HAD WITH MR. NUNEZ ABOUT THESE THREE  
13 CO-DEFENDANTS.

14 THE COURT FINDS THAT MR. ALLEN DID NOT WRITE  
15 GOVERNMENT'S EXHIBIT NO. 1, HE DID NOT WRITE ANY OF  
16 GOVERNMENT'S EXHIBIT NO. 1. GOVERNMENT'S EXHIBIT 1 IS  
17 VERY DETAILED WITH PICTURES OF TWO OF THREE CO-DEFENDANTS,  
18 SOCIAL SECURITY NUMBERS OF TWO OF THREE CO-DEFENDANTS,  
19 PHONE NUMBERS, BIRTH DATES, ALL CONSISTENT WITH THE  
20 TESTIMONY OF AGENT YORK CONCERNING INFORMATION SET FORTH  
21 ON STATE COURT ARREST WARRANT DOCUMENTATION, INCLUDING  
22 PHOTOGRAPHS.

23 DAVID MICHAEL JONES WAS NOT ARRESTED AT THE SAME TIME  
24 AS MR. NUNEZ, AND HIS PICTURE IS NOT ON THIS PIECE OF  
25 PAPER, WHICH IS FURTHER CORROBORATIVE OF THIS COURT'S

1 FINDING THAT IN FACT MR. NUNEZ PREPARED THIS GOVERNMENT'S  
2 EXHIBIT 1.

3 THE COURT FINDS THAT THE DEFENDANT WILLFULLY  
4 OBSTRUCTED OR IMPEDED OR ATTEMPTED TO OBSTRUCT OR IMPEDE  
5 THE ADMINISTRATION OF JUSTICE WITH RESPECT, AT A MINIMUM,  
6 TO THE SENTENCING OF THE INSTANT OFFENSE OF CONVICTION,  
7 EVEN IF ONE ASSUMES THAT IN MR. NUNEZ'S MIND HE BELIEVED  
8 THAT MR. JONES OR THESE OTHER CO-DEFENDANTS WERE  
9 ATTRIBUTING DRUG WEIGHT OR OTHER CRIMINAL CONDUCT TO HIM.

10 THE COURT BELIEVES THAT MR. -- AND BELIEVES AND FINDS  
11 THAT MR. NUNEZ WILLFULLY OBSTRUCTED OR IMPEDED OR  
12 ATTEMPTED TO OBSTRUCT OR IMPEDE THE ADMINISTRATION OF  
13 JUSTICE WITH RESPECT TO HIS SENTENCING FOR THE INSTANT  
14 OFFENSE OF CONVICTION, AND THAT THE OBSTRUCTIVE CONDUCT  
15 RELATED TO HIS OFFENSE OF CONVICTION AND ANY RELEVANT  
16 CONDUCT OR CLOSELY RELATED CONDUCT.

17 THE COURT HAS REVIEWED AND CONSIDERED THE ARGUMENTS  
18 OF COUNSEL, IN PARTICULAR THE DISCUSSION OF *UNITED STATES*  
19 *V. BROOKS*. AGAIN, THE COURT THINKS THAT *BROOKS* DOES NOT  
20 ASSIST THE DEFENDANT IN CONNECTION WITH THIS ARGUMENT.  
21 THE COURT FINDS THAT THE DEFENDANT DID CONSCIOUSLY ACT  
22 WITH THE PURPOSE OF OBSTRUCTING JUSTICE.

23 IN *UNITED STATES V. SELF*, 132 F.3D 1039, (4TH CIRCUIT  
24 1997), THE 4TH CIRCUIT STATED, "ATTEMPTING TO HAVE A  
25 WITNESS KILLED EASILY FALLS WITHIN THE TYPE OF CONDUCT



1 THAT CONSTITUTES AN OBSTRUCTION OF JUSTICE." CERTAINLY  
2 THE THREE TARGETS OF THIS PLOT THAT MR. NUNEZ INITIATED  
3 WERE CONNECTED TO HIS CASE AND TO HIS SENTENCING, AND HE  
4 ENGAGED IN THIS CONDUCT WITH THE INTENT TO OBSTRUCT  
5 JUSTICE. THE COURT ALSO BELIEVES THAT MR. NUNEZ'S CONDUCT  
6 FALLS COMFORTABLY WITHIN THE CONFINES OF THE COVERED  
7 CONDUCT DESCRIBED IN APPLICATION NOTE FOUR OF SECTION  
8 3C1.1.

9 AS FOR THE OBJECTION CONCERNING ACCEPTANCE OF  
10 RESPONSIBILITY UNDER SECTION 3B1.1, THE TEXT OF THAT  
11 GUIDELINE PROVISION REQUIRES THAT A DEFENDANT CLEARLY  
12 DEMONSTRATE ACCEPTANCE OF RESPONSIBILITY.

13 APPLICATION NOTE FIVE NOTES THAT A SENTENCING JUDGE  
14 IS IN A UNIQUE POSITION TO EVALUATE A DEFENDANT'S  
15 ACCEPTANCE OF RESPONSIBILITY.

16 APPLICATION NOTE FOUR STATES, "CONDUCT RESULTING IN  
17 AN ENHANCEMENT UNDER SECTION 3C1.1, OBSTRUCTING OR  
18 IMPEDING THE ADMINISTRATION OF JUSTICE ORDINARILY  
19 INDICATES THAT THE DEFENDANT HAS NOT ACCEPTED  
20 RESPONSIBILITY FOR HIS CRIMINAL CONDUCT. THERE MAY  
21 HOWEVER BE EXTRAORDINARY CASES IN WHICH ADJUSTMENTS UNDER  
22 SECTIONS 3C1.1 AND 3B1.1 MAY APPLY." THE COURT FINDS THIS  
23 IS NOT SUCH AN EXTRAORDINARY CASE.

24 THE COURT FINDS THAT MR. NUNEZ'S OBSTRUCTION OF  
25 JUSTICE IN CONNECTION WITH HIS COMMUNICATION REFLECTED IN

1 GOVERNMENT'S EXHIBIT NO. 1, AND HIS DESIRE TO HAVE THOSE  
2 THREE CO-DEFENDANTS MURDERED SPEAKS AN ABJECT LACK OF  
3 ACCEPTANCE OF RESPONSIBILITY. THE COURT ALSO AND  
4 ALTERNATIVELY FINDS THAT MR. NUNEZ DID NOT CLEARLY ACCEPT  
5 RESPONSIBILITY BASED UPON HIS CONVERSATION WITH MR. ALLEN,  
6 ONCE MR. NUNEZ LEARNED THAT MR. ALLEN'S FIANCEE'S RELATIVE  
7 HAD A TRUCKING BUSINESS THAT COULD BE USED TO TRANSPORT  
8 DRUGS. THAT FURTHER SPEAKS TO THE LACK OF ACCEPTANCE OF  
9 RESPONSIBILITY IN THIS CASE.

10 HAVING FULLY CONSIDERED THE ARGUMENTS ASSOCIATED WITH  
11 THE OBSTRUCTION OF JUSTICE ENHANCEMENT AND THE ABSENCE OF  
12 ACCEPTANCE OF RESPONSIBILITY, THOSE OBJECTIONS ARE  
13 OVERRULED.

14 ARE THERE ANY OTHER OBJECTIONS, MR. ASHTON?

15 **MR. ASHTON:** NO, YOUR HONOR.

16 **THE COURT:** ANY OBJECTIONS FROM THE GOVERNMENT?

17 **MR. ONTJES:** NO, YOUR HONOR.

18 **THE COURT:** ALL RIGHT. THE TOTAL OFFENSE LEVEL,  
19 FOR PURPOSES OF *BOOKER* AND ITS PROGENY, IS 36. THE  
20 CRIMINAL HISTORY CATEGORY IS V. THE ADVISORY GUIDELINE  
21 RANGE IS 292 TO 365-MONTHS.

22 DOES THE GOVERNMENT OBJECT TO THAT ADVISORY GUIDELINE  
23 DETERMINATION?

24 **MR. ONTJES:** IT DOES NOT, YOUR HONOR.

25 **THE COURT:** AND WITH YOUR OBJECTIONS PRESERVED,

1 TO THE POINT YOU OBJECTED TO, MR. ASHTON, JUST AS TO THE  
2 CALCULATION, DO YOU OBJECT TO THAT CALCULATION OF THE  
3 ADVISORY GUIDELINE RANGE?

4 **MR. ASHTON:** I STILL HAVE A DEPARTURE ISSUE, BUT  
5 AT THIS POINT I AGREE THAT IS CORRECT.

6 **THE COURT:** OKAY. WELL, LET'S TAKE A RECESS  
7 UNTIL 1:45 P.M. AND THEN WE'LL TAKE UP THE DEPARTURE  
8 MOTION THAT THE DEFENSE FILED. THERE'S NO MOTION FROM THE  
9 GOVERNMENT IN THIS CASE THAT'S REFLECTED IN THE PAPERS.

10 **MR. ONTJES:** NO, YOUR HONOR.

11 **THE COURT:** WE'LL TAKE UP THE DEFENSE MOTION AT  
12 1:45 P.M. AND THEN WE'LL CONTINUE WITH THE 3553(A)  
13 FACTORS.

14 **MR. ASHTON:** I BELIEVE I HAVE A VARIANCE MOTION  
15 TOO. THEY SHOULD BE FAIRLY QUICK.

16 **THE COURT:** RIGHT. THE COURT WILL BE IN RECESS  
17 UNTIL 1:45 P.M.

18 (LUNCH RECESS TAKEN.)

19 **THE COURT:** ALL RIGHT. AT THIS TIME THE COURT  
20 WILL RECOGNIZE MR. ASHTON TO SPEAK TO HIS MOTION FOR A  
21 DEPARTURE.

22 **MR. ASHTON:** THANK YOU, YOUR HONOR. THE MOTION  
23 FOR DEPARTURE IS UNDER GUIDELINE SECTION 4A1.3, WHICH IS  
24 BASICALLY WE'RE CONTENDING THAT THE CRIMINAL HISTORY  
25 CATEGORY SUBSTANTIALLY OVERREPRESENTS THE SERIOUSNESS OF

1 THE DEFENDANT'S PAST CONDUCT OR THE LIKELIHOOD HE WILL  
2 COMMIT OTHER CRIMES.

3 I'VE SEEN RECORDS A LOT LONGER IN FEDERAL COURT THAN  
4 THIS ONE, AND AT LESS THAN TEN POINTS. MR. NUNEZ HAS  
5 ENDED UP WITH TEN POINTS, I BELIEVE WHICH MADE HIM A  
6 CATEGORY V. ONE OF THEM WAS FOR A DRIVING OFFENSE AND  
7 THAT GAVE HIM HIS FOUR POINTS, AND BASICALLY THE LAST SIX  
8 POINTS ARISE OUT OF THE POSSESSION OF A FIREARM BY FELON  
9 CHARGE. HE GOT THREE POINTS FOR THAT. WHEN THIS  
10 OCCURRED, HE WAS ON PAROLE AND HE HAD GOTTEN OUT OF PRISON  
11 LESS THAN TWO YEARS BEFORE. ALL OF A SUDDEN HE ENDED UP  
12 WITH SIX POINTS FOR BASICALLY THAT ONE SERIES OF EVENTS.

13 SO WE THINK THIS CATEGORY DOES IN FACT OVERREPRESENT  
14 HIS PAST CONDUCT.

15 **THE COURT:** NOW, UNDER 4A1.1, HE DOESN'T GET ANY  
16 POINTS FOR ABSCONDING, RIGHT, AS REFLECTED AT THE END OF  
17 PARAGRAPH 14, RIGHT? YOU SAID ESSENTIALLY FOR THESE  
18 SERIES OF EVENTS HE GOT SIX. HE GOT THREE FOR THE  
19 POSSESSION OF A FIREARM BY A FELON CONVICTION, RIGHT? AND  
20 THEN HE'S ON PAROLE AS OF MARCH 15, 2006, AND HE GETS TWO  
21 POINTS FOR THAT, RIGHT?

22 **MR. ASHTON:** CORRECT.

23 **THE COURT:** TELL ME WHERE -- YOU SAID THAT THOSE  
24 SERIES OF EVENTS YIELDED SIX, AND SO THE OTHER POINT IS  
25 THE 4A1.1(E). IS THAT WHAT YOU ARE SAYING?

1           **MR. ASHTON:** THE LAST POINT IS, HE HAD BEEN OUT,  
2 I THINK, LESS THAN TWO YEARS. HE GOT A POINT FOR THAT.  
3 WHAT I'M SAYING IS, WHEN YOU LOOK AT ALL OF THIS TOGETHER,  
4 HIS RECORD IS NOT THAT BAD COMPARED TO MOST WHO COME IN  
5 HERE. SOMEHOW HE JUST ENDED UP WITH TEN POINTS BASED ON A  
6 RECORD, I WOULD SUBMIT, IS NOT AS SERIOUS AS TEN POINTS  
7 WOULD NORMALLY ALLOW.

8           **THE COURT:** AND YOUR FOCUS WOULD BE ON THE  
9 CONVICTION IN PARAGRAPH 14. THAT'S WHAT YOUR MAIN  
10 CONTENTION IS. YOU THINK THAT'S WHAT REALLY DRIVES HIM TO  
11 A FIVE, AND YOUR PAPERS SUGGEST HE SHOULD BE A THREE.  
12 TELL ME HOW YOU GET FROM TEN TO SIX. I ASSUME BECAUSE YOU  
13 ARGUE THAT THE COURT OUGHT TO GO DOWN TO CRIMINAL HISTORY  
14 CATEGORY III, WHICH WOULD BE A FOUR, FIVE, OR SIX POINTS.

15           **MR. ASHTON:** THAT'S CORRECT. ALL I SUGGEST, I  
16 JUST SORT OF PULLED THAT OUT OF THE AIR BASED ON  
17 EXPERIENCE AND SEEING LOTS OF RECORDS THROUGH ALL OF THE  
18 YEARS. I CERTAINLY THINK ONE POINT SHOULD, I THINK, GET  
19 HIM DOWN. I'VE LOST MY CHART HERE NOW. ONE POINT WOULD  
20 LOWER HIM TO CATEGORY IV.

21           OF COURSE, AS I SAY, ONE OF THESE IS A DRIVING  
22 OFFENSE. I THINK THERE WAS SOME OVERLAPPAGE OF TIME. I  
23 THINK WHEN HIS PROBATION WAS REVOKED ON THE FIRST CASE, I  
24 THINK HE ENDED UP -- THIS POSSESSION OF FIREARM IMPACTED  
25 REVOCATION ON ANOTHER ONE AS WELL AND, OF COURSE, HE PAID

1 HIS DUES ON ALL OF THOSE CASES. THAT'S BASICALLY WHERE  
2 WE'RE COMING FROM ON THE DEPARTURE.

3 **THE COURT:** OKAY. LET ME HEAR FROM MR. ONTJES.

4 **MR. ONTJES:** THANK YOU, YOUR HONOR. YOUR HONOR,  
5 THE GOVERNMENT OPPOSES ANY TYPE OF DEPARTURE BASED ON HIS  
6 CRIMINAL HISTORY. I WOULD NOTE 4A1.3, APPLICATION NOTE  
7 THREE, WHICH GIVES AN EXAMPLE OF WHEN PERHAPS A DOWNWARD  
8 DEPARTURE IS APPROPRIATE.

9 THE EXAMPLE GIVEN IS THAT WHERE A DEFENDANT HAS TWO  
10 MINOR MISDEMEANOR CONVICTIONS CLOSE TO TEN YEARS PRIOR TO  
11 THE INSTANT OFFENSE. HERE, AS THE COURT -- SPECIFICALLY  
12 IN PARAGRAPH 14, A DEFENDANT WHO ATTEMPTS TO SELL TWO SKS  
13 RIFLES, ONE AK-47 RIFLE, AND A .44 CALIBER REVOLVER TO AN  
14 UNDERCOVER OFFICER IN 2005, LESS THAN THREE YEARS BEFORE  
15 HE WAS INVOLVED IN THIS DRUG ORGANIZATION WHICH HE'S NOW  
16 BEFORE THE COURT BEING SENTENCED.

17 SO THAT, I WOULD SUBMIT, IS A SIGNIFICANT -- HE PLED  
18 OF COURSE TO POSSESSION OF A FIREARM BY A FELON. I THINK  
19 THE FACT IT WAS A SIGNIFICANT CHARGE, THAT FIREARMS  
20 INVOLVED ARE ASSAULT RIFLES. THAT, AGAIN, IT WAS RECENT  
21 IN TIME TO THE OFFENSE THAT HE'S NOW BEFORE THE COURT, AND  
22 THEREFORE WE DON'T BELIEVE -- THE UNITED STATES DOES NOT  
23 BELIEVE THAT DEPARTURE IS WARRANTED HERE. THANK YOU.

24 **THE COURT:** THANK YOU. THE COURT HAS CONSIDERED  
25 THE MOTION FOR DEPARTURE UNDER SECTION 4A1.3. SECTION

1 4A1.3(B)(1) STATES, "IF RELIABLE INFORMATION INDICATES  
2 THAT THE DEFENDANT'S CRIMINAL HISTORY CATEGORY  
3 SUBSTANTIALLY OVERREPRESENTS THE SERIOUSNESS OF THE  
4 DEFENDANT'S CRIMINAL HISTORY OR THE LIKELIHOOD THAT THE  
5 DEFENDANT WILL COMMIT OTHER CRIMES, A DOWNWARD DEPARTURE  
6 MAY BE WARRANTED."

7 AS MR. ONTJES POINTED OUT, COMMENTARY IN APPLICATION  
8 NOTE THREE GIVES AN EXAMPLE WHERE A DOWNWARD DEPARTURE MAY  
9 BE WARRANTED. THE EXAMPLE DESCRIBES THE DEFENDANT WHO HAS  
10 HAD TWO MINOR MISDEMEANOR CONVICTIONS CLOSE TO TEN YEARS  
11 PRIOR TO THE INSTANT OFFENSE, AND NO OTHER EVIDENCE OF  
12 PRIOR CRIMINAL BEHAVIOR IN THE INTERVENING PERIOD.

13 THE COURT DOES NOT BELIEVE DOWNWARD DEPARTURE IS  
14 APPROPRIATE IN THIS CASE. THE COURT HAS REVIEWED THE  
15 CRIMINAL HISTORY SET OUT AT PARAGRAPHS 11 THROUGH 15 AND  
16 THE CRIMINAL HISTORY COMPUTATION AT PARAGRAPH 16 THROUGH  
17 19. THE COURT BELIEVES THE COMPUTATION IS CORRECT AND  
18 CONSISTENT WITH THE GUIDELINE PROVISIONS.

19 MOREOVER, THE COURT BELIEVES THE DEFENDANT'S CRIMINAL  
20 HISTORY IS FAR REMOVED IN SPACE AND TIME FROM THE EXAMPLE  
21 GIVEN IN APPLICATION NOTE THREE. THE DEFENDANT HAS BEEN  
22 CONVICTED OF FELONY TERRORIST THREAT IN MARCH 2003. HE  
23 PLEADED GUILTY, SERVED A CUSTODIAL SENTENCE. HE WAS  
24 PLACED ON PROBATION. NOTABLY HIS PROBATION WAS REVOKED.

25 PARAGRAPH 12, HE DID GET A DRIVING OFFENSE. HE WAS

1 PLACED ON PROBATION. THAT PROBATION WAS REVOKED. ANOTHER  
2 DRIVING OFFENSE IN PARAGRAPH 13. HE WAS PLACED ON  
3 PROBATION. ALTHOUGH THAT WASN'T REVOKED, HE DID REOFFEND  
4 WITHIN THE TWO-YEAR PERIOD WITH A POSSESSION OF A FIREARM  
5 BY A FELON, RECEIVED A CUSTODIAL SENTENCE, WAS PAROLED,  
6 ABSCONDED.

7 THE COURT DOES NOT BELIEVE CRIMINAL HISTORY CATEGORY  
8 V SUBSTANTIALLY OVERREPRESENTS EITHER THE SERIOUSNESS OF  
9 THE DEFENDANT'S PAST CRIMINAL CONDUCT OR THE LIKELIHOOD  
10 THAT HE WILL COMMIT OTHER CRIMES. SO THAT MOTION IS  
11 DENIED.

12 THERE BEING NO STANDARD DEPARTURE MOTION FROM THE  
13 GOVERNMENT, THE COURT WILL NOW CONSIDER THE DEFENSE  
14 ARGUMENTS ASSOCIATED WITH THE 3553(A) FACTORS. AS PART OF  
15 THAT, I WILL HEAR FROM MR. ASHTON ABOUT THE 3553(A)  
16 FACTORS, INCLUDING THE MOTION FOR A VARIANCE WHICH, OF  
17 COURSE, ANY VARIANCE EITHER UP OR DOWN NEEDS TO BE TIED TO  
18 THE 3553(A) FACTORS IN CONNECTION WITH THIS COURT MEETING  
19 ITS OBLIGATION TO IMPOSE A SENTENCE SUFFICIENT BUT NOT  
20 GREATER THAN NECESSARY TO COMPLY WITH THE PURPOSES SET  
21 FORTH IN SECTION 3553(A). SO THE COURT WILL RECOGNIZE MR.  
22 ASHTON.

23 **MR. ASHTON:** THANK YOU, YOUR HONOR. AGAIN, ON  
24 OUR VARIANCE MOTION, IN VIEW OF ALL THE OTHER RULINGS, MR.  
25 NUNEZ HAS COME IN AT A CATEGORY LEVEL 36, CATEGORY V, AND



1 THAT WAS THEN DETERMINED TO BE 292 TO 365 MONTHS. THIS  
2 YOUNG MAN WILL BE 26 IN ABOUT TWO WEEKS, AND THAT IS WELL  
3 INTO THE 20 TO 30-YEAR RANGE, AS IT IS.

4 I WOULD SUBMIT TO THE COURT, WHILE MARIJUANA IS  
5 SERIOUS, IT'S CERTAINLY NOT AS SERIOUS A CRIME AS COCAINE  
6 OR METH OR HEROIN, OR SOME OF THESE OTHER DRUGS THAT WE  
7 DEAL WITH, AND YOU ARE PROBABLY NOT GOING TO SEE THIS LONG  
8 A SENTENCE ON A MARIJUANA CASE. UNFORTUNATELY, MR. NUNEZ  
9 HAS GOT HIMSELF INTO THIS POSITION, BUT I WOULD SIMPLY  
10 ARGUE TO THE COURT THAT THIS RANGE IS EVEN HARSH WHEN YOU  
11 CONSIDER THE ORIGINAL CHARGE THAT HE HAD.

12 WE HAVE PROVIDED YOU WITH A NUMBER OF CHARACTER  
13 LETTERS AND FAMILY LETTERS.

14 **THE COURT:** THE COURT HAS REVIEWED THOSE LETTERS  
15 AND THANK YOU FOR SUBMITTING THEM.

16 **MR. ASHTON:** HE DOES HAVE VERY STRONG FAMILY  
17 SUPPORT. I BELIEVE HE NEEDS TO FURTHER HIS EDUCATION.  
18 HE'S SOMEONE WHO SEEMED TO LOSE TRACK OF LIFE AFTER HIS  
19 DAD DIED OF CANCER, AND APPARENTLY HE WAS ABLE, AT SOME  
20 TIME, TO BE A DECENT STUDENT. HE SEEMS TO HAVE THE  
21 INTELLIGENCE TO, IF HE COULD, GO BACK AND GET SOME  
22 EDUCATIONAL OPPORTUNITIES.

23 WE SUBMIT A SENTENCE LESS THAN THE GUIDELINE RANGE  
24 WOULD STILL AVAIL MR. NUNEZ OF THE EDUCATIONAL  
25 OPPORTUNITIES IN PRISON. IT WOULD ALSO PROTECT THE

1 PUBLIC. IT WOULD DETER OTHERS BECAUSE THE RANGE IS  
2 SIGNIFICANT. EVEN IF YOU DO SENTENCE HIM BELOW THE  
3 SUGGESTED GUIDELINE RANGE, I WOULD CERTAINLY SUGGEST TO  
4 THE COURT IT WOULD BE JUST PUNISHMENT, IT WOULD DETER  
5 OTHERS, AND IT WOULD STILL PROMOTE RESPECT FOR THE LAW.

6 I CERTAINLY THINK THERE ARE A NUMBER OF SENTENCES  
7 UNDER 292 WHICH WOULD STILL ACHIEVE ALL THE SENTENCING  
8 FACTORS UNDER 3553.

9 DO YOU WANT ME TO CLOSE OUT EVERYTHING THAT YOU WANT  
10 SAID AT THIS TIME?

11 **THE COURT:** YES. I'M GOING TO HEAR FROM MR.  
12 NUNEZ AND THEN I'LL HEAR FROM MR. ONTJES. AFTER  
13 MR. ONTJES SPEAKS, IF THERE'S SOMETHING THAT YOU WANT TO  
14 SAY, I'LL HEAR FROM YOU.

15 **MR. ASHTON:** ALL RIGHT. WELL, I THINK YOU  
16 REVIEWED EVERYTHING, YOU HEARD EVERYTHING, AND I JUST  
17 DON'T KNOW HOW SOMEONE LIKE THIS COULD END UP LOOKING AT A  
18 SENTENCE LIKE HE DOES NOW. SEEMS LIKE EVERY MOVE WAS MADE  
19 WRONG.

20 THE FIRST THING I TELL A CLIENT IN JAIL IS, "KEEP  
21 YOUR MOUTH SHUT AND YOUR EARS OPEN." UNFORTUNATELY, FOR  
22 WHATEVER REASON, HIS SENTENCE HAS SIGNIFICANTLY ESCALATED  
23 SINCE HE PLED GUILTY AND TRIED TO DO THE RIGHT THING.

24 **THE COURT:** WELL, HE DIDN'T QUITE ALWAYS TRY TO  
25 DO THE RIGHT THING, RIGHT, IN LIGHT OF SOME OF THE COURT'S

1 PRIOR FINDINGS. FAIR TO SAY THAT'S, AND I'LL SAY THAT  
2 IT'S VERY TROUBLING, VERY TROUBLING TO THIS COURT. I'M  
3 LISTENING TO YOUR ARGUMENT ABOUT A VARIANCE AND I'M STILL  
4 LISTENING, BUT I WANT YOU TO KNOW THAT I'M THINKING ABOUT  
5 VARYING THE OTHER WAY BECAUSE I'M VERY TROUBLED BY THIS  
6 TYPE OF CONDUCT THAT TOOK PLACE, VERY SPECIFIC, DETAILED  
7 INFORMATION TO MURDER THREE PEOPLE.

8 I CAN SAY THAT I HAVE GIVEN OBSTRUCTION ENHANCEMENTS,  
9 I HAVE TAKEN AWAY ACCEPTANCE OF RESPONSIBILITY. THE  
10 SUPREME COURT IN *BOOKER* AND ITS PROGENY HAS MADE CLEAR  
11 THAT SENTENCING COURTS SEE A LOT MORE CASES THAN APPELLATE  
12 COURTS WILL EVER SEE. SEE PROBABLY MORE IN A YEAR THAN  
13 THEY WILL SEE IN A DECADE. AS PART OF THAT PROCESS, THIS  
14 COURT, UNFORTUNATELY SOMETIMES, THANKFULLY NOT TOO OFTEN,  
15 SEES OBSTRUCTION. BUT THERE'S OBSTRUCTION AND THEN  
16 THERE'S OBSTRUCTION, AND I THINK WE'RE IN THE LATTER  
17 CATEGORY HERE.

18 SO I WANT YOU TO KNOW THAT, AND I WANT YOU TO KNOW  
19 HOW TROUBLED I AM BY THIS DEFENDANT'S CONDUCT, NOT ONLY  
20 FOR THAT PLOT BUT I CREDIT ALLEN'S TESTIMONY ABOUT THIS  
21 DEFENDANT IN WHAT, IN THIS COURT'S VIEW, IS A CAVALIER  
22 ATTITUDE TOWARD RECRUITING SOMEBODY TO JUST GET BACK INTO  
23 THE DRUG BUSINESS WITH HIM. SO GO AHEAD.

24 **MR. ASHTON:** YOUR HONOR, I'M TROUBLED TOO. AS  
25 AN ATTORNEY WE TRY TO DO THE BEST WE CAN FOR THE CLIENT.

1 WE TRY TO HELP THE CLIENT. I TRIED TO GUIDE HIM THROUGH,  
2 AND HE'S INDICATED HE WANTED TO COOPERATE. HE HAS BEEN  
3 THROUGH SOME DEBRIEFINGS. THIS MURDER CASE IS NOT SOLVED.  
4 I HAVE BEEN CONTACTED BY DETECTIVES OF ROCKY MOUNT ON  
5 SEVERAL OCCASIONS AND NOT STATING THAT MR. YORK'S  
6 COLLEAGUE GOT THAT WRONG, BUT WE'RE HOPING TO FOLLOW UP ON  
7 THAT. IT'S NOT CONSISTENT WITH -- FOR THAT PART IT'S NOT  
8 CONSISTENT WITH MR. NUNEZ BEING INVOLVED IN WHAT YOU  
9 DETERMINED TO BE OBSTRUCTION.

10 AS I WORKING ON ONE SIDE TO TRY TO HELP HIM, THEN I  
11 KEEP GETTING INFORMATION THAT HE'S SORT OF SHOOTING  
12 HIMSELF IN THE FOOT, BUT I WANT TO HELP HIM IF I CAN. HE  
13 IS A YOUNG MAN. HE'S LOOKING AT AN EXTREME AMOUNT OF  
14 TIME, A LITTLE MORE THAN DOUBLE HIS LIFE, IF YOU SENTENCE  
15 HIM WITHIN THIS RANGE. IT WILL BE ANOTHER 26 YEARS BEFORE  
16 HE GETS OUT, MORE THAN LIKELY.

17 I WOULD LIKE TO MAYBE SUGGEST THAT MAYBE IT'S HIS  
18 LACK OF MATURITY. HE'S JUST SORT OF LOST. I DON'T KNOW  
19 HOW THIS OCCURRED IN THE LAST FEW MONTHS. BASICALLY I WAS  
20 COMING IN HERE WITH HOPEFULLY A SENTENCE IN THE TEN TO 13  
21 YEAR RANGE WITH A POSSIBILITY OF 5K OR RULE 35. NOW HE'S  
22 LOOKING AT ALL OF THIS.

23 I CERTAINLY SUBMIT TO THE COURT THAT ANY SENTENCE IN  
24 THE GUIDELINE RANGE AS IT NOW EXISTS, OR EVEN LOW END OF  
25 THAT, IS A VERY, VERY SIGNIFICANT SENTENCE. CERTAINLY

1 HOPING THE COURT WOULD SEE FIT TO SENTENCE WITHIN THE LOW  
2 END OF THAT, AND CAN ACHIEVE THE GOALS OF THE SENTENCING  
3 FACTORS WITH SOMETHING EVEN LESS, ALTHOUGH I UNDERSTAND  
4 THE COURT'S POSITION.

5 **THE COURT:** THANK YOU, MR. ASHTON. AT THIS TIME  
6 THE COURT WILL RECOGNIZE MR. NUNEZ IF YOU'D LIKE TO MAKE A  
7 STATEMENT, SIR.

8 **MR. NUNEZ:** YOUR EXCELLENCY, OBVIOUSLY I'M  
9 NOT -- I'M A SCREW-UP, AND THAT'S MY FAULT. I DON'T BLAME  
10 ANYBODY IN THIS COURTROOM. THEY ARE DOING THEIR JOB. I  
11 CAN'T BLAME THEM FOR IT. THERE'S NOTHING THAT I CAN SAY  
12 TO POSSIBLY HELP ME. ALL I KNOW IS I JUST NEED TO MAN UP  
13 NOW AND TAKE RESPONSIBILITY. I'D BE LYING TO YOU IF I  
14 TRIED TO CONVINCE YOU OTHERWISE.

15 YOU KNOW, I DID MISS A LOT OF MY CHILDHOOD WITH WHAT  
16 HAPPENED TO MY FATHER. HE WAS A BIG ASSET IN MY FAMILY,  
17 AND HE WAS MY HERO. IRONICALLY, GROWING UP I WANTED TO BE  
18 A DEA AGENT. OBVIOUSLY I WENT THE OTHER WAY.

19 ALL I ASK IS HOPEFULLY -- NOT THAT I ASK, I HOPE I  
20 LEARN SOMETHING FROM THIS SO HOPEFULLY IF I MAKE IT OUT OF  
21 PRISON, I CAN BE A PRODUCTIVE CITIZEN. MAYBE LEARN A  
22 TRADE, HELP OTHERS THROUGH MY SCREW-UPS IN LIFE. OTHER  
23 THAN THAT, YOUR HONOR, I'M JUST VERY SORRY. I'M A SORRY  
24 PERSON.

25 **THE COURT:** THANK YOU, MR. NUNEZ. THE COURT

1 WILL RECOGNIZE MR. ONTJES TO SPEAK ON BEHALF OF THE UNITED  
2 STATES.

3 **MR. ONTJES:** YOUR HONOR, THE UNITED STATES WILL  
4 BE BRIEF. WE WOULD ASK THE COURT TO IMPOSE A SENTENCE IN  
5 THE UPPER END OF THE RANGE IN THIS CASE. WHILE  
6 ACKNOWLEDGING THAT THE OBSTRUCTION AND LOSS OF ACCEPTANCE  
7 HAS BEEN INCORPORATED WITHIN THAT RANGE, AS THE COURT HAS  
8 ALREADY REVIEWED THE FACTS, THIS IS, I SUBMIT, VERY  
9 SERIOUS, AS FAR AS OBSTRUCTION GOES, WITH THE DETAILS THAT  
10 WERE PROVIDED AND THE INFORMATION PROVIDED TO MR. ALLEN  
11 REQUESTING THE MURDER OF THREE DIFFERENT WITNESSES IN THIS  
12 CASE.

13 YOUR HONOR, UNDER 3553(A), I KNOW THE COURT IS VERY  
14 FAMILIAR WITH THAT STATUTE, AS FAR AS THE PURPOSE OF THE  
15 SENTENCING FACTORS, TO PROMOTE RESPECT FOR THE LAW AND  
16 REFLECT THE SERIOUSNESS OF THE OFFENSE. HERE'S A  
17 DEFENDANT WHO HAS DISTRIBUTED LARGE AMOUNTS OF DRUGS. NOT  
18 ONLY THAT, BUT WHEN CAUGHT, ATTEMPTED TO HAVE WITNESSES  
19 AGAINST HIM KILLED. FURTHERMORE, TO CONTINUE HIS  
20 OPERATIONS EVEN AFTER BEING CAUGHT. AGAIN, CLEARLY  
21 DEMONSTRATES SOMEONE WHO NEEDS OR HAS NOT SHOWN RESPECT  
22 FOR THE LAW, AND ACCORDINGLY THE GUIDELINE RANGE, WE  
23 BELIEVE, IS APPROPRIATE HERE AND I WOULD ASK THE COURT TO  
24 SO SENTENCE. THANK YOU.

25 **THE COURT:** THANK YOU.

1           **MR. ASHTON:** YOUR HONOR, IF I MAY INTERRUPT ONE  
2 SECOND. WE WANT TO MAKE SURE THE JUDGMENT HAS SUBSTANCE  
3 ABUSE TREATMENT WHEREVER HE GOES AND EDUCATION AND  
4 VOCATIONAL OPPORTUNITIES AS WELL. I DON'T WANT TO RELY ON  
5 HIM BEING FROM SOMEWHERE ELSE, THE DESIGNATION APPROPRIATE  
6 HERE NEAREST TO BUTNER.

7           **THE COURT:** SOME FACILITY NEAR --

8           **MR. ASHTON:** HE'S TOLD ME IN THE PAST HE WOULD  
9 AT LEAST APPRECIATE A RECOMMENDATION TO BUTNER. IT'S IN  
10 THE AREA HE HAS BEEN LIVING THE LAST YEAR OR TWO. THE BOP  
11 WILL DO WHAT THEY DECIDE TO DO ANYWAY.

12           **THE COURT:** I CAN'T FATHOM THAT MR. NUNEZ WILL  
13 GO TO A MEDIUM SECURITY FACILITY. I JUST CAN'T FATHOM  
14 THAT. I CAN'T RECOMMEND THAT. THAT'S ALL THEY HAVE AT  
15 BUTNER. IF THERE'S SOME OTHER PLACE YOU WANT TO -- SOME  
16 OTHER STATE, I'LL RECOMMEND A STATE, BUT I WON'T RECOMMEND  
17 BUTNER.

18           **MR. ASHTON:** HE ASKS IF YOU COULD RECOMMEND  
19 CALIFORNIA. AT LEAST THAT WOULD BE CLOSE TO HIS FAMILY,  
20 AS WELL AS THE EDUCATIONAL AND SUBSTANCE ABUSE. THANK  
21 YOU, YOUR HONOR.

22           **THE COURT:** THANK YOU.

23           (PAUSE IN THE PROCEEDINGS.)

24           ALL RIGHT, MR. NUNEZ. THE COURT RECOGNIZES ITS  
25 OBLIGATION TO IMPOSE A SENTENCE SUFFICIENT BUT NOT GREATER

1 THAN NECESSARY TO COMPLY WITH THE PURPOSES SET FORTH IN  
2 THE STATUTE. THE COURT HAS CONSIDERED ALL ARGUMENTS THAT  
3 YOUR LAWYER HAS MADE ON YOUR BEHALF. THE COURT HAS  
4 CONSIDERED YOUR STATEMENT, THE INFORMATION SUBMITTED BY  
5 YOUR LAWYER, INCLUDING ALL THE LETTERS FROM PEOPLE WHO  
6 HAVE WRITTEN ON YOUR BEHALF. THE ARGUMENTS OF THE  
7 ASSISTANT UNITED STATES ATTORNEY. ALL OF THE RELEVANT  
8 EVIDENCE SUBMITTED HERE TODAY IN CONNECTION WITH THE  
9 OBJECTIONS. THE COURT HAS CONSIDERED THE ADVISORY  
10 GUIDELINE RANGE.

11 AMONG OTHER THINGS THE COURT IS TO CONSIDER ARE THE  
12 NATURE AND CIRCUMSTANCES OF THE OFFENSE AND THE HISTORY  
13 AND CHARACTERISTICS OF THE DEFENDANT. THE NEED FOR THE  
14 SENTENCE IMPOSED TO REFLECT THE SERIOUSNESS OF THE  
15 OFFENSE. TO PROMOTE RESPECT FOR THE LAW AND PROVIDE JUST  
16 PUNISHMENT FOR THE OFFENSE. TO AFFORD ADEQUATE DETERRENCE  
17 TO CRIMINAL CONDUCT. TO PROTECT THE PUBLIC FROM FURTHER  
18 CRIME BY YOU, AND TO PROVIDE YOU WITH NEEDED EDUCATIONAL  
19 OR VOCATIONAL TRAINING, MENTAL CARE OR OTHER CORRECTIONAL  
20 TREATMENT IN THE MOST EFFECTIVE MANNER. THE STATUTE LISTS  
21 A NUMBER OF OTHER FACTORS. I HAVE CONSIDERED ALL OF THOSE  
22 FACTORS, ALTHOUGH I WILL NOT MENTION THEM.

23 AS FOR THE NATURE AND CIRCUMSTANCES OF THE OFFENSE,  
24 YOU DID ENTER A PLEA OF GUILTY TO POSSESSION WITH INTENT  
25 TO DISTRIBUTE IN EXCESS OF 100 KILOGRAMS OF MARIJUANA, IN



1 VIOLATION OF 21 USC SECTION 841(A)(1). THE OFFENSE  
2 CONDUCT IS SET FORTH IN THE CRIMINAL INFORMATION AND IN  
3 THE PRESENTENCE REPORT.

4 YOU WERE PART OF THE GROUP THAT WERE FOUND -- THAT  
5 WAS FOUND WITH APPROXIMATELY 408 KILOGRAMS OF MARIJUANA, I  
6 THINK IT WAS 901 POUNDS. AS REFLECTED IN PARAGRAPH SIX OF  
7 THE PSR, THIS WAS NOT YOUR FIRST FORAY INTO THE DRUG  
8 BUSINESS. YOU HAD COME TO NORTH CAROLINA BEFORE TO  
9 COORDINATE DRUG SHIPMENTS AND COLLECT MONEY FOR THE PEREZ  
10 DRUG ORGANIZATION FROM CALIFORNIA. YOU ARE CONSERVATIVELY  
11 RESPONSIBLE FOR THE DISTRIBUTION OF OVER 3,000 KILOGRAMS  
12 OF MARIJUANA, IN THIS COURT'S VIEW.

13 AS PART OF THE NATURE AND CIRCUMSTANCES OF THE  
14 OFFENSE, AS REFLECTED IN PARAGRAPH SEVEN OF THE REPORT AND  
15 AS FOUND BY THIS COURT, YOU ENGAGED IN OBSTRUCTION OF  
16 JUSTICE IN CONNECTION WITH YOUR OFFER TO HAVE DAVID JONES,  
17 PHILLIP MORGAN, AND JIMMY BROGDEN MURDERED. THE COURT  
18 FOUND THAT EVIDENCE TO BE QUITE CHILLING.

19 YOU DID NOT DEMONSTRATE ACCEPTANCE OF RESPONSIBILITY  
20 IN THIS COURT'S VIEW, BASED ON THAT BEHAVIOR AND CERTAINLY  
21 BASED ON YOUR CONVERSATION WITH ALLEN ABOUT TRYING TO HAVE  
22 HIM USE HIS FAMILY MEMBER AND HIS TRUCKING BUSINESS TO  
23 CONTINUE SHIPMENTS OF ILLEGAL DRUGS INTO THIS STATE.

24 AS FOR YOUR HISTORY AND CHARACTERISTICS, THE COURT  
25 DOES NOTE THE INFORMATION IN THE LETTERS THAT MR. ASHTON

1 RECEIVED AND SUBMITTED ON YOUR BEHALF. YOU DO HAVE SOME  
2 FAMILY MEMBERS WHO CONTINUE TO SUPPORT YOU. THE COURT  
3 RECOGNIZES THAT YOUR FATHER DIED OF LUNG CANCER IN 1997.  
4 YOUR MOTHER IS STILL ALIVE.

5 YOUR CRIMINAL HISTORY IS NOT GOOD. YOU HAVE A FELONY  
6 TERRORIST THREATS CONVICTION AT AGE 19. YOU HAVE A NUMBER  
7 OF PROBATION REVOCATIONS. YOU ABSCONDED, AS REFLECTED IN  
8 PARAGRAPH 14. YOU HAVE A FELONY POSSESSION OF A FIREARM.  
9 YOU SERVED SOME TIME, GOT OUT, AND ALMOST IMMEDIATELY GOT  
10 BACK INTO THE CRIME BUSINESS.

11 YOU HAVE A SUBSTANTIAL SUBSTANCE ABUSE HISTORY. THE  
12 COURT IS GOING TO RECOMMEND, AND YOU WILL HAVE A SENTENCE  
13 THAT WILL PROVIDE AMPLE TIME FOR INTENSIVE SUBSTANCE ABUSE  
14 TREATMENT. THE COURT WILL RECOMMEND THAT YOU RECEIVE THE  
15 MOST INTENSIVE SUBSTANCE ABUSE TREATMENT AVAILABLE IN THE  
16 BUREAU OF PRISONS. THE COURT HOPES YOU TAKE ADVANTAGE OF  
17 THE EDUCATIONAL AND VOCATIONAL OPPORTUNITIES THAT WILL BE  
18 MADE AVAILABLE TO YOU.

19 YOU ARE AN ARTICULATE MAN. YOU ARE A TENTH GRADE  
20 DROP-OUT WHO'S NEVER GOTTEN A GED. AS REFLECTED IN  
21 PARAGRAPHS 30 AND 31 IN THE REPORT, YOU ESSENTIALLY NEVER  
22 HELD A LAWFUL JOB. YOU WORKED BRIEFLY, ACCORDING TO THE  
23 REPORT, AT ECNO LUBE AND TUBE IN ONTARIO, CALIFORNIA, AND  
24 FOR ONE WEEK IN 2004. AT ALL OTHER TIMES YOU HAVE BEEN  
25 UNEMPLOYED, INCARCERATED, OR YOU SUPPORTED YOURSELF

1 THROUGH ILLEGAL MEANS.

2 AS FOR THE NEED FOR THE SENTENCE IMPOSED TO REFLECT  
3 THE SERIOUSNESS OF THE OFFENSE, THE COURT WILL IMPOSE A  
4 SENTENCE THAT REFLECTS THE SERIOUSNESS OF THIS OFFENSE,  
5 INCLUDING YOUR CONDUCT WHILE INCARCERATED HERE. IT WILL  
6 BE A SENTENCE THAT PROMOTES RESPECT FOR THE LAW AND  
7 PROVIDES JUST PUNISHMENT.

8 THE COURT BELIEVES IT CRITICAL TO DETER BOTH THE  
9 CONDUCT SET FORTH IN THE CRIMINAL INFORMATION AND THE  
10 CONDUCT THAT YOU ENGAGED IN WHILE IN JAIL. THAT TYPE OF  
11 CONDUCT NEEDS TO BE DETERRED AND STRIKES AT THE CORE OF  
12 THE RULE OF LAW IN THIS COUNTRY. THERE IS A NEED TO  
13 PROTECT THE PUBLIC FROM FURTHER CRIME BY YOU UNTIL YOU  
14 DECIDE TO ABIDE BY THE LAW. THE COURT BELIEVES THAT YOU  
15 NEED A LONG TIME TO DO THAT, AND YOU NEED A LONG TIME TO  
16 BE PUNISHED FOR YOUR CONDUCT. TODAY YOU ARE GOING TO GET  
17 A SENTENCE THAT WILL PROTECT THE PUBLIC FROM YOU. YOU DO  
18 NEED TO BE INCAPACITATED.

19 AFTER MUCH REFLECTION, THE COURT IS NOT GOING TO VARY  
20 UPWARDLY. I LISTENED TO MR. ASHTON'S ARGUMENT ABOUT  
21 VARYING DOWN. THE COURT, IN LIGHT OF MR. NUNEZ'S OFFENSE  
22 BEHAVIOR, HISTORY AND CHARACTERISTICS, THE NEED TO DETER  
23 HIM, THE NEED TO DETER OTHERS, BELIEVES A DOWNWARD  
24 VARIANCE WOULD BE GROSSLY INAPPROPRIATE IN THIS CASE, AN  
25 UPWARD VARIANCE WOULD BE VERY DEFENSIBLE.

1           THERE ARE CASES, AND THE COURT HAS REVIEWED THEM,  
2   INCLUDING *UNITED STATES V. WATERS*, 281 F.APPX 152, (4TH  
3   CIRCUIT, 2008), WHICH AFFIRMED AN UPWARD VARIANCE WHERE  
4   THERE WAS ANALOGOUS OBSTRUCTIVE BEHAVIOR. I WILL NOT  
5   UPWARDLY VARY TODAY, AFTER HAVING FULLY CONSIDERED ALL OF  
6   THE FACTORS IN 3553(A) .

7           THE COURT WILL RECOMMEND AND HOPES THAT MR. NUNEZ  
8   TAKES ADVANTAGE OF THE VOCATIONAL AND EDUCATIONAL  
9   OPPORTUNITIES. THE COURT DOES RECOMMEND SUBSTANCE ABUSE  
10   TREATMENT. THE COURT RECOMMENDS THAT MR. NUNEZ SERVE HIS  
11   PRISON SENTENCE AT A FEDERAL CORRECTIONAL INSTITUTION ON  
12   THE WEST COAST THAT IS OF A SUFFICIENT DEGREE OF SECURITY  
13   TO HOUSING.

14          HAVING FULLY CONSIDERED ALL OF THE FACTORS SET OUT IN  
15   3553(A) AND ALL ARGUMENTS OF COUNSEL, PURSUANT TO THE  
16   SENTENCING REFORM ACT OF 1984, AND IN ACCORDANCE WITH THE  
17   SUPREME COURT'S DECISION IN *UNITED STATES V. BOOKER* AND  
18   ITS PROGENY, IT IS THE JUDGMENT OF THE COURT THAT THE  
19   DEFENDANT, FERNANDO MIGUEL NUNEZ, IS HEREBY COMMITTED TO  
20   THE CUSTODY OF THE BUREAU OF PRISONS TO BE IMPRISONED FOR  
21   A TERM OF 365-MONTHS.

22          UPON RELEASE FROM IMPRISONMENT, THE DEFENDANT SHALL  
23   BE PLACED ON SUPERVISED RELEASE FOR A TERM OF FIVE YEARS.  
24   WITHIN 72 HOURS OF RELEASE FROM THE CUSTODY OF THE BUREAU  
25   OF PRISONS, THE DEFENDANT SHALL REPORT IN PERSON TO THE

1 PROBATION OFFICE IN THE DISTRICT TO WHICH HE'S RELEASED.

2 WHILE ON SUPERVISED RELEASE, THE DEFENDANT SHALL NOT  
3 COMMIT ANOTHER FEDERAL, STATE, OR LOCAL CRIME AND SHALL  
4 NOT ILLEGALLY POSSESS A CONTROLLED SUBSTANCE. HE SHALL  
5 NOT POSSESS A FIREARM OR DESTRUCTIVE DEVICE. HE SHALL  
6 COMPLY WITH THE STANDARD CONDITIONS THAT HAVE BEEN ADOPTED  
7 AND SHALL COMPLY WITH THE FOLLOWING ADDITIONAL CONDITIONS.

8 HE SHALL PARTICIPATE AS DIRECTED BY PROBATION IN THE  
9 TREATMENT FOR NARCOTIC ADDICTION. HE SHALL CONSENT TO  
10 WARRANTLESS SEARCH AS DIRECTED BY PROBATION UNDER THE  
11 STANDARD CONDITIONS OF THIS DISTRICT. HE SHALL  
12 PARTICIPATE IN A VOCATIONAL TRAINING PROGRAM. HE SHALL  
13 COOPERATE IN THE COLLECTION OF DNA. HE SHALL PAY A  
14 SPECIAL ASSESSMENT OF \$100 TO THE UNITED STATES, WHICH  
15 SHALL BE DUE IMMEDIATELY.

16 THE COURT IS GOING TO IMPOSE A FINE OF \$10,000. THE  
17 COURT IS NOT GOING TO IMPOSE INTEREST. THAT FINE WILL BE  
18 PAID THROUGH THE INMATE FINANCIAL RESPONSIBILITY PROGRAM.

19 MR. NUNEZ WILL HAVE A JOB WHILE INCARCERATED. PART  
20 OF HIS PAY FROM THAT JOB WILL GO TO PAY HIS FINE. ANY  
21 AMOUNT DUE AT THE TIME OF RELEASE SHALL BE PAID IN  
22 INSTALLMENTS OF \$50 PER MONTH.

23 THE COURT HAS ANNOUNCED THIS SENTENCE HAVING FULLY  
24 CONSIDERED ALL THE 3553(A) FACTORS, ALL ARGUMENTS OF  
25 COUNSEL, ALL EVIDENCE IN THE RECORD THAT WAS ADMITTED.

1           MR. NUNEZ, YOU CAN APPEAL YOUR CONVICTION IF YOU  
2 BELIEVE THAT YOUR GUILTY PLEA WAS SOMEHOW UNLAWFUL OR  
3 INVOLUNTARY, OR IF THERE WAS SOME OTHER FUNDAMENTAL DEFECT  
4 IN THE PROCEEDING THAT WAS NOT WAIVED BY YOUR GUILTY PLEA.  
5 YOU ALSO HAVE A STATUTORY RIGHT TO APPEAL YOUR SENTENCE  
6 UNDER CERTAIN CIRCUMSTANCES, PARTICULARLY IF YOU THINK  
7 YOUR SENTENCE IS CONTRARY TO LAW. HOWEVER, THE DEFENDANT  
8 MAY WAIVE THOSE RIGHTS AS PART OF THE PLEA AGREEMENT. YOU  
9 DID ENTER INTO A PLEA AGREEMENT.

10           IN PARAGRAPH 2C OF THAT AGREEMENT, WHICH THE COURT  
11 READ TO YOU AT YOUR RULE 11 HEARING, YOU AGREED TO WAIVE  
12 CERTAIN APPELLATE RIGHTS. IN LIGHT OF THE SENTENCE THAT  
13 YOU RECEIVED, IT'S THE COURT'S VIEW THAT YOU WAIVED YOUR  
14 RIGHT TO APPEAL YOUR SENTENCE. IF YOU BELIEVE THAT WAIVER  
15 IN YOUR PLEA AGREEMENT IN PARAGRAPH 2C IS EITHER  
16 UNENFORCEABLE OR INAPPLICABLE FOR ANY REASON, YOU CAN  
17 PRESENT THAT THEORY TO THE APPELLATE COURT. WITH FEW  
18 EXCEPTIONS, ANY NOTICE OF APPEAL MUST BE FILED WITHIN TEN  
19 DAYS OF THE JUDGMENT BEING ENTERED ON THE DOCKET IN YOUR  
20 CASE.

21           IF YOU ARE UNABLE TO PAY THE COST OF AN APPEAL, YOU  
22 MAY APPLY FOR LEAVE TO APPEAL IN FORMA PAUPERIS. IF YOU  
23 SO REQUEST, THE CLERK OF COURT WILL PREPARE AND FILE A  
24 NOTICE OF APPEAL ON YOUR BEHALF.

25           MR. ASHTON, I THINK I GOT ALL THE RECOMMENDATIONS YOU

1 ASKED FOR. IS THERE ANYTHING ELSE, SIR?

2 MR. ASHTON: NO, YOUR HONOR. THEY'RE ALL IN  
3 THERE. THANK YOU.

4 THE COURT: ANYTHING ELSE FROM THE GOVERNMENT?

5 MR. ONTJES: NO, YOUR HONOR.

6 THE COURT: THAT WILL CONCLUDE THE MATTER  
7 INVOLVING MR. NUNEZ. GOOD LUCK TO YOU, SIR.

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20 END OF TRANSCRIPT  
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## 1 CERTIFICATE

2 THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF  
3 PROCEEDINGS TAKEN AT THE CRIMINAL SESSION OF UNITED STATES  
4 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF THE  
5 PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND  
6 TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

7 THIS THE 19TH DAY OF AUGUST, 2009.

8  
9 /S/ DONNA J. TOMAWSKI

10 DONNA J. TOMAWSKI  
11 OFFICIAL COURT REPORTER  
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